



## Board of Education

Thursday, September 22, 2011, 5:00 PM

Adams Leadership Center, Winborn Conference Room

I.	Call to Order, Susan Heil, President	I-1
II.	Pledge of Allegiance, Fayetteville High School	II-1
III.	Roll Call of Members	III-1
IV.	Recognition of People, Events, & Programs	IV-1
V.	Citizen Participation	V-1
VI.	Consent Agenda	
	A. Reading of the Minutes	VI-A1
	B. Certified Staff Changes	VI-B1
	C. Classified Staff Changes	VI-C1
	D. Student Transfers	VI-D1
	E. Financial Report	VI-E1
<i>*Any item shall be removed from the consent items section at the request of one board member.</i>		
VII.	Action Items	
	A. 2011-12 Special Education Budget – Debra Wilson	VII-A1
	B. ACSIP Statement of Assurance – Kay Jacoby	VII-B1
	C. Policy Additions and Revisions – Ginny Wiseman	VII-C1
	D. Nabholz Contract for Capital Projects – Vicki Thomas	VII-D1
	E. Crafton Tull & Associates Contract for Capital Projects – Vicki Thomas	VII-E1
	F. Audit Contract – Lisa Morstad	VII-F1
	G. Qualified School Construction Bond Ratification – Lisa Morstad	VII-G1
VIII.	Information Items	
	A. <i>Key Work of School Board Study: Climate</i> – Tim Hudson	VIII-A1
	B. FHS Update – Vicki Thomas	VIII-B1
IX.	Expulsion Hearing	IX-1
X.	Adjournment	X-1

**If you wish to speak during citizen participation or an action item report, please observe the following:**

1. *Avoid references, statements or conduct reasonably likely to result in disruption or undue delay in the orderly transaction of the business scheduled for consideration by the Board.*
2. *Avoid personal attacks of any identified individual or group.*
3. *Refrain from cumulative or repetitive remarks.*
4. *Refrain from obscenity, vulgarity or other breach of respect.*
5. *Refrain from words or statements which, from their usual construction and common acceptance, are construed as insults and tend to breach the peace.*
6. *Comply with the time limits for public comment (5 minutes for citizen participation; 3 minutes for action item.)*



September 22, 2011

### **I. Call to Order**

### **II. Pledge of Allegiance**

Fayetteville High School  
Mr. Steve Jacoby, Principal

### **III. Roll Call**

Susan Heil, President  
Tim Hudson, Vice President  
Jim Halsell, Secretary  
Bryn Bagwell, Member  
Justin Eichmann, Member  
Steve Percival, Member  
Becky Purcell, Member



September 22, 2011

## **IV. Recognition of People, Events and Programs**

## **V. Citizen Participation**

## **VI. Consent Agenda**

Reading of the Minutes  
Certified Staff Changes  
Classified Staff Changes  
Student Transfers  
Financial Report



Minutes of the August 25, 2011 Regular Meeting of the  
Fayetteville Board of Education

The meeting convened at 5:00pm in the Adams Leadership Center with President Susan Heil presiding. The Pledge of Allegiance was led by students from Holt Middle School.

**Roll Call**

The roll was called and board members Jim Halsell, Susan Heil, Justin Eichmann, Bryn Bagwell, Steve Percival and Becky Purcell were present.

**Recognition**

Brett Lawson, band director at Fayetteville High School, Ramay Junior High and Holt Middle School, and Debbie Simmons, custodian and crossing guard at McNair Middle School, received Above & Beyond Awards for their outstanding work in the district.

Sylvia Sosa, district payroll manager, received an Impact Award of Excellence for her outstanding work.

**Consent Agenda**

The Board approved the consent agenda by a 6-0 vote. Jim Halsell made the motion, which was seconded by Steve Percival.

**FHS Graduation Requirements**

The Board voted 6-0 to approve the changes in the requirements to participate in the Fayetteville High School graduation ceremony. The changes begin with the class of 2016. Becky Purcell made the motion, which was seconded by Justin Eichmann.

**FHS Honors & High Honor Graduation Requirements**

The Board voted 6-0 to approve the recommended changes in the graduation requirements for Fayetteville High School honors and high honor graduates. The changes begin with the class of 2016. Jim Halsell made the motion, which was seconded by Bryn Bagwell.

**Revisions to Policies 5.7 (Absences) & 5.8 (Make-up Work)**

The Board voted 6-0 to approve the changes to Policy 5.7 (Absences). Steve Percival made the motion, which was seconded by Jim Halsell.

The Board voted 6-0 to amend Policy 5.8 (Make-up Work) to read “makeup work will be allowed only for the first 10 days.” Becky Purcell made the motion, which was seconded by Bryn Bagwell. The Board voted 6-0 to approve Policy 5.8 as amended. Becky Purcell made the motion, which was seconded by Justin Eichmann.

Revisions to both policies are required by Act 1223 of the 88<sup>th</sup> General Assembly, which states that unexcused absences are no longer allowed.

**New Policies 6.16 (Naming Rights) and 6.17 (Naming Facilities)**

The Board voted 6-0 to amend Policy 6.16 (Naming Rights) to include Section VII (Funds). Steve Percival made the motion, which was seconded by Jim Halsell.

The Board voted 6-0 to approve Policy 6.16 as amended. Becky Purcell made the motion, which was seconded by Steve Percival.



The Board voted 5-1 to amend Policy 6.17 (Naming Facilities) by replacing the first paragraph of Section IV A (New Facilities) with the amended language. Steve Percival made the motion, which was seconded by Jim Halsell.

The Board voted 6-0 to approve Policy 6.17 as amended. Steve Percival made the motion, which was seconded by Jim Halsell.

#### **Qualified School Construction Bonds**

The Board voted 6-0 to approve a revised resolution to accept an additional \$185,000.00 in Qualified School Construction Bonds for a total of \$1,140,000.00. Becky Purcell made the motion, which was seconded by Steve Percival.

#### **Auditor Selection**

The Board voted 6-0 to authorize the district to enter into negotiations with Hudson, Cisne & Co. CPA firm to develop a contract for auditing services for the district. Dr. Lisa Morstad, chief financial officer, reported that four bids for audit services were received during the RFP process this summer. Administration's recommendation is to hire Hudson, Cisne & Co. CPA from Little Rock. Steve Percival made the motion, which was seconded by Justin Eichmann.

#### ***Key Work of School Boards Study***

Board member Justin Eichmann presented the fifth of eight presentations by board members on *The Key Work of School Boards*. Mr. Eichmann emphasized that alignment in the district relates to continuous communication, clarity and agreement of goals, understanding of roles and responsibilities and the process for completing work.

#### **FY11 Year End Report**

Dr. Morstad presented the final report on the FY11 district budget.

#### **Fayetteville High School Status Report**

Phil Jones from Nabholz Construction reported that the FHS project is on time and on budget. Work is being done on the Phase II design development. Bids should be done in late November or early December. Work on Phase II is planned to begin during spring break 2012.

#### **Adjournment**

The meeting was adjourned at 6:45pm

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Susan W. Heil, President

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Jim Halsell, Secretary



September 22, 2011

## B. Certified Staff Changes

TO: Board of Education

FROM: Vicki Thomas, Superintendent

I recommend approval of the following personnel actions:

### Provisional Employment<sup>1</sup>

<i>Name</i>	<i>Position &amp; Assignment</i>	<i>Replacement/New</i>	<i>Period</i>
Jon Medders <sup>2</sup>	Literacy Specialist/ALLPS	New	11/12
Rachelle Sale <sup>2,3,8</sup>	School Psychology Specialist	Replacement	11/12
Michael Ferguson <sup>3,8</sup>	Teacher/Owl Creek	Replacement	11/12
Steve Adair <sup>4</sup>	Teacher/Washington	New	11/12
Shae Newman <sup>4,11</sup>	Teacher/Woodland	Replacement	11/12

### Employment – Transfers, Changes

<i>Name</i>	<i>Position &amp; Assignment</i>	<i>Replacement/ New Position</i>	<i>Period</i>
Jill Phillips	Literacy Program Support Specialist	New	11/12
Melody Jones	Instructional Facilitator/FHS	New	11/12
Martha Fields	Teacher/Adult Education	New	11/12

### Contract Renewal

<i>Name</i>	<i>Period</i>
Eva Sue Lynch	11-12

<sup>1</sup>Pending Completion of a criminal background check and receipt of eligibility information from the Department of Education

<sup>2</sup>One year only

<sup>3</sup>Year 1 of 1 year new hire probationary period

<sup>4</sup>Year 1 of 3 year new hire probationary period

<sup>5</sup>Year 2 of 3 year new hire probationary period

<sup>6</sup>Year 3 of 3 year new hire probationary period

<sup>7</sup>Per policy 4150

<sup>8</sup>Contingent upon receipt of Arkansas Teaching Licensure

<sup>9</sup>One year contract contingent on grant funding

<sup>10</sup>Contingent upon acceptance in ALP program

<sup>11</sup>Contract contingent upon waiver approval

<sup>12</sup>Contingent upon receipt of ABESBA License

<sup>13</sup>Contingent upon receipt of Medicaid Billing #.



September 22, 2011

TO: Board of Education

FROM: Vicki Thomas, Superintendent

I recommend approval of the following personnel actions:

### Classified Staff Changes

#### Provisional Employment<sup>1,2</sup>

<i>Name</i>	<i>Position &amp; Assignment</i>	<i>Replacement/New</i>	<i>Period</i>
Sarah Paul	Special Ed Aide/Owl Creek	Replacement	11/12
Kyle Harris	ISS Supervisor	Replacement	11/12
Mindy Mahan	21 <sup>st</sup> CCLC Coordinator/Owl Creek	New	11/12
Ruth Ann Yarbrough	Counseling Asst/FHS	Replacement	11/12
Tommy Cooper	Custodian	Replacement	11/12
Jennifer Hewers	Lunchroom Aide/Happy Hollow	Replacement	11/12
Joe Young	Bus Driver/Transportation	Replacement	11/12
Mary Young	Bus Driver/Transportation	Replacement	11/12
Gerald Burkett	Bus Driver/Transportation	Replacement	11/12
James Hull	Bus Driver/Transportation	Replacement	11/12
Venus Ayers	Sign Language Interpreter/Owl Creek	Replacement	11/12
Anthony Samuels	Food Service Tech/Vandergriff	Replacement	11/12
Tricia Stuber	Crossing Guard/Vandergriff	Replacement	11/12
Logan LeMaster	Sales & Use Tax Accountant/Admin	New	11/12
Alessandra Buchanan	Special Ed Aide/Holcomb	Replacement	11/12

#### Employment – Transfers, Changes

<i>Name</i>	<i>Position &amp; Assignment</i>	<i>Replacement/ New Position</i>	<i>Period</i>
Robert Johnson III	Early Morning Duty/Owl Creek	Replacement	11/12
Sandra Ward	Administrative Asst/Admin Annex	Replacement	11/12
Melody Carter	Lunchroom Aide/Leverett	Replacement	11/12
Sherri Hardaway	Lunchroom Aide/Leverett	Replacement	11/12
Dessie Reed	Title I Aide/Happy Hollow	Replacement	11/12
Shirley Grogan	Crossing Guard/Vandergriff	Replacement	11/12
Rebecca Owens	Lunchroom Aide/Leverett	Replacement	11/12
Connie Schell	Crossing Guard/Vandergriff	Replacement	11/12

#### Resignations

<i>Name</i>	<i>Position &amp; Assignment</i>
Santiago Servant	Bus Driver/Transportation
Carol Cheatham	Special Ed Aide/Ramay
Joseph Dukes	Bus Driver/Transportation
Nell Sisco	Title I Aide/Butterfield
Mary Medlin	Custodian/District



## Contract Renewal

<i>Name</i>	<i>Position &amp; Assignment</i>
Amy Guthrie	Title I Aide/Butterfield
Linda Smith	Title I Aide/Butterfield
Kristen Hodskins	Title I Aide/Butterfield

<sup>1</sup>Pending completion of a criminal background check and receipt of eligibility information from the Department of Education

<sup>2</sup>One Year Probationary Period

<sup>3</sup>Based on Student Count

<sup>4</sup>Grant Funded

<sup>5</sup>One Year Only



September 22, 2011

## **Consent Agenda**

### **D. Student Transfers**

TO: Board of Education  
FROM: Vicki Thomas

I recommend approval of the following student transfer requests:

#### ***Incoming:***

Marjorie Stevens requests that her children, Caden Stevens, grade 3, and Koby Stevens, kindergartener, be transferred from the Elkins School District to the Fayetteville School District

Matthew Bolinger requests that his child, Matthew Thomas Bolinger, grade 12, be transferred from the Siloam Springs School District to the Fayetteville School District

Rae Russell requests that her child, Madeline Wood, grade 9, be transferred from the Farmington School District to the Fayetteville School District

Del Perea requests that his children, Daniel Perea, grade 8, and William Perea, grade 12, be transferred from the Farmington School District to the Fayetteville School District

Jennifer Purtle requests that her child, Michael Purtle, grade 3, be transferred from the Farmington School District to the Fayetteville School District

Nilly Al-Banna requests that her child, Nour Abu-Safe, grade 9, be transferred from the Farmington School District to the Fayetteville School District

Hope Bercher requests that her child, Aaron Bercher, grade 10, be transferred from the Huntsville School District to the Fayetteville School District

Irveue Williams requests that his child, Charles Ray Davies, grade 12, be transferred from the Farmington School District to the Fayetteville School District



Jo Creed Pruett requests that her child, Qiana Creed Pruett, grade 12, be transferred from the Farmington School District to the Fayetteville School District

***Outgoing:***

Kyle Brouillette requests that his child, Haley Brouillette, grade 11, be transferred from the Fayetteville School District to the Prairie Grove School District.

Erica Johnson requests that her children, Jeremiah, grade 10, Jessica Johnson, grade 8, and Logan Johnson, grade 6, be transferred from the Fayetteville School District to the Elkins School District

Mary Farmer requests that her children, Noah Farmer, grade 2, and Peyton Farmer, kindergartner, be transferred from the Fayetteville School District to the Springdale School District

Jack Carpenter requests that his child, Kiara Lee Carpenter, grade 11, be transferred from the Fayetteville School District to the Elkins School District

Terri Rutherford requests that her children, Carlee McCoy, grade 4, and Chloe McCoy, grade 1, be transferred from the Fayetteville School District to the Elkins School District

Jessica Mars requests that her child, Caleb Mars, kindergartner, be transferred from the Fayetteville School District to the Springdale School District

Amy Wunder requests that her children, Gabrielle Wunder, grade 10, and Morgan Wunder, grade 6, be transferred from the Fayetteville School District to the West Fork School District

Regina Trimm requests that her children, Lauren Trimm, grade 12, and Jordan Trimm, grade 12, be transferred from the Fayetteville School District to the Greenland School District

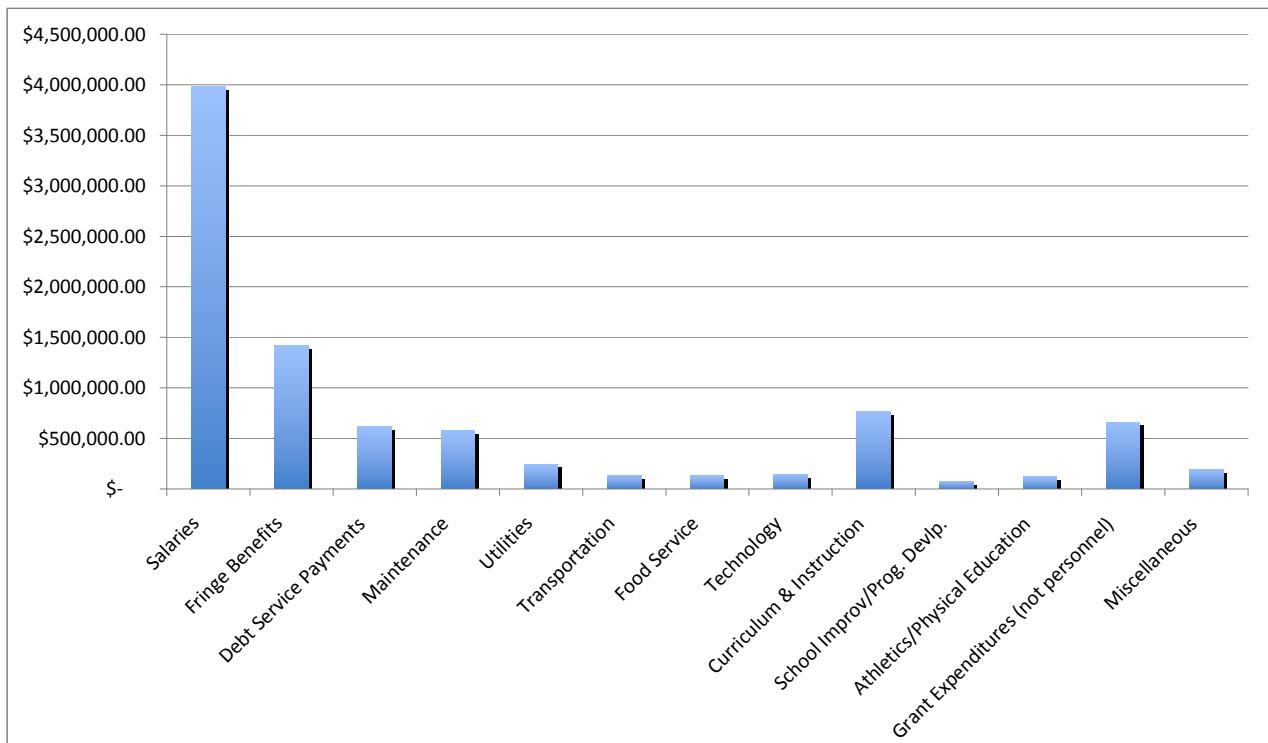
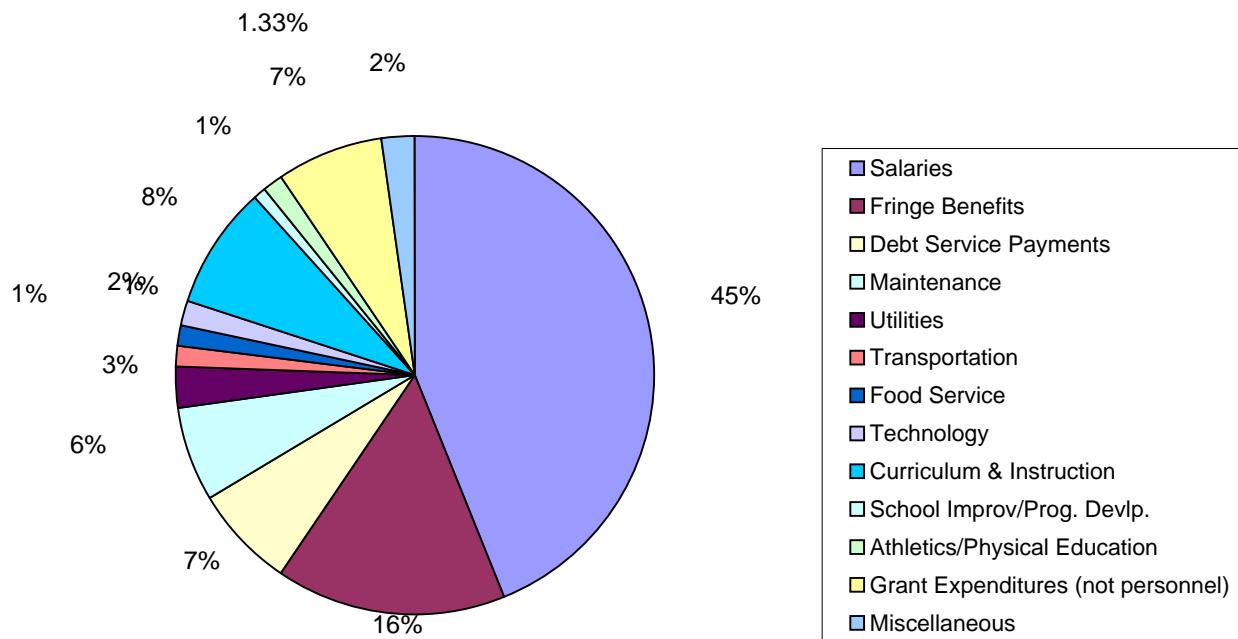
**Executive Summary Financial Report**  
**Fayetteville Public Schools**  
**FY2011-2012**

Revenues:	9/14/2011	Revised FY11 Budget	FY12 Budget	Year to Date 8/31/2011	Note	% of Budget	Year to Date 8/31/2010
				2 months of 12 = 16%			2 months of 12 = 16%
Property Tax Reserve	\$ 3,000,000	\$ 3,000,000	\$ 3,000,000	\$ 3,000,000		100%	\$ 3,000,000
21 C Fund	\$ 900,000	\$ 400,000	\$ 400,000	\$ 400,000			\$ 900,000
Capital Funds & Savings for FHS	\$ 2,278,635	\$ 2,197,500	\$ 2,197,500	\$ 2,197,500			\$ 2,278,635
Uncommitted Cfwd							
Restricted Carryforwards	\$ 2,712,502			\$ 919,422			\$ 2,712,502
State Funds	\$ 22,705,524	\$ 25,609,927	\$ 2,251,666		a	9%	\$ 2,507,933
Local Funds	\$ 55,034,303	\$ 58,232,701	\$ 10,165,931		a	17%	\$ 9,007,354
Interest on checking account	\$ 75,000	\$ 125,000	\$ 21,470		a	17%	\$ 31,040
Fed Funds/Grants/Restricted	\$ 11,344,586	\$ 8,972,645	\$ 623,751		a	7%	\$ 1,012,795
Vocational Education	\$ 27,000	\$ 27,000	\$ 6,297		a	23%	\$ -
Softdrink contract	\$ 50,000	\$ -	\$ -				
Athletic Gate Receipts	\$ 125,000	\$ 125,000	\$ 22,858		a	18%	\$ 27,271
Miscellaneous	\$ 130,000	\$ 130,000	\$ 22,361		a	17%	\$ 78,734
Food Service sales	\$ 1,463,104	\$ 1,500,000	\$ 184,747			12%	\$ 64,534
<b>Reserve</b>	<b>\$ 5,281,200</b>	<b>\$ 5,281,200</b>	<b>\$ 5,281,200</b>			100%	<b>\$ 5,281,200</b>
<b>Total Revenues &amp; Reserve:</b>	<b>\$ 105,126,854</b>	<b>\$ 105,600,972</b>	<b>\$ 25,097,203</b>				<b>\$ 26,901,998</b>
<b>Expenditures:</b>							
Salaries	\$ 58,051,410	\$ 59,052,810	\$ 3,982,277		b	7%	\$ 2,394,662
Fringe Benefits	\$ 14,512,853	\$ 14,763,203	\$ 1,422,267		b	10%	\$ 593,115
Debt Service Payments	\$ 11,020,000	\$ 13,700,000	\$ 621,379		c	5%	\$ 621,379
Maintenance & Operations:							
Maintenance	\$ 1,230,755	\$ 1,280,755	\$ 576,090		d	45%	\$ 631,144
Utilities	\$ 1,673,899	\$ 1,673,899	\$ 247,033			15%	\$ 203,202
Transportation	\$ 846,873	\$ 914,873	\$ 132,232			14%	\$ 56,860
Food Service	\$ 1,054,183	\$ 1,054,183	\$ 128,973			12%	\$ 88,294
Technology	\$ 469,614	\$ 606,207	\$ 146,137		e	24%	\$ 106,916
Curriculum & Instruction	\$ 1,569,423	\$ 1,850,812	\$ 767,060		e	41%	\$ 897,715
School Improv/Prog. Devlp.	\$ 235,422	\$ 235,422	\$ 74,265		e	32%	\$ 58,573
Athletics/Physical Education	\$ 323,926	\$ 323,926	\$ 120,652		f	37%	\$ 175,510
Grant Expenditures (not personnel)	\$ 2,195,794	\$ 1,054,183	\$ 661,183		e	63%	\$ 759,502
Miscellaneous	\$ 405,000	\$ 562,951	\$ 193,404		a	34%	\$ 170,658
Tuition	\$ 44,000	\$ 44,000	\$ -		a	0%	\$ -
C21 Curriculum	\$ 500,000	\$ 202,549	\$ 145,898		e	72%	\$ 351,721
<b>Reserve</b>	<b>\$ 5,281,200</b>	<b>\$ 5,281,200</b>	<b>\$ 5,281,200</b>				<b>\$ 5,281,200</b>
<b>Unrestricted Carryforward</b>	<b>\$ 3,000,000</b>	<b>\$ 3,000,000</b>	<b>\$ 3,000,000</b>				<b>\$ 3,000,000</b>
<b>Restricted Carryforward</b>	<b>\$ 2,712,502</b>	<b>\$ 919,422</b>					<b>\$ 2,712,502</b>
<b>Total Expenditures &amp; Reserve:</b>	<b>\$ 105,126,854</b>	<b>\$ 105,600,972</b>	<b>\$ 18,419,471</b>				<b>\$ 18,102,952</b>

**Executive Summary**  
**Fayetteville Public Schools**  
**FY2011-2012**  
**Notes to Financial Report**

- a. Funding/Expenditures not incurred equally throughout the year.
- b. First teacher payroll occurred in August (September in FY11)
- c. Debt service payments primarily due on December 1st and June 1st.
- d. Expenditures are related to timing of projects and payment of insurance policies at the beginning of the school year.
- e. Includes purchases of textbooks and other supplies purchased before beginning of school year.
- f. Expenditures at the beginning of the school year include equipment and uniform expenses

## FY12 Expenditures thru 8/31/11





**To; Fayetteville School Board  
From: Debra Wilson, Director of Special Services  
Date: September 22, 2011  
RE: Special Education Budget 2011-2012**

**The Special Education Budget Application for school year 2011-2012 is  
presented for your consideration.**

**FAYETTEVILLE PUBLIC SCHOOLS  
SPECIAL EDUCATION  
2010-2011 ANNUAL FINANCIAL AND 2011-2012 PROJECTED BUDGETS**

STATE/LOCAL FUNDING	BUDGET	ANNUAL	BUDGET
	2010-2011	FINANCIAL	2011-2012
SALARIES/FRINGE	\$6,868,360.00	6,695,781.86	7,417,335.00
PROFESSIONAL DEVELOPMENT	\$40,000.00	16,370.88	30,000.00
CONTRACTED PROF. SERV.	\$63,075.00	20,132.05	73,000.00
TRAVEL EXPENSES	\$33,000.00	28,315.28	33,000.00
CLASSROOM ALLOTMENT	\$39,500.00	31,107.54	40,622.00
TESTING MATERIALS/SUPPLIES	\$40,017.00	41,869.77	38,970.00
EQUIPMENT	\$0.00	6,361.48	0.00
MEDICAID MATCH	\$35,000.00	20,132.05	35,000.00
OTHER	\$1,000.00	721.40	1,000.00
	\$7,119,952.00	\$6,860,792.31	\$7,668,927.00
CATASTROPHIC FUNDING OFFSET	-\$108,073.26	95,444.05	97,466.00
<b>TOTAL</b>	<b>\$7,011,878.74</b>	<b>\$6,956,236.36</b>	<b>\$7,766,393.00</b>
TITLE VI-B FUNDING	BUDGET	ANNUAL	BUDGET
	2010-2011	FINANCIAL	2011-2012
SALARIES/FRINGE	\$1,434,829.00	1,424,289.08	1,427,113.00
CONTRACTED SERVICES	\$231,322.00	154,706.65	262,228.00
TRAVEL EXPENSES	\$9,000.00	538.52	24,000.00
SUPPLIES	\$102,809.00	152,176.58	100,798.00
EQUIPMENT	\$60,000.00	10,068.23	0.00
OTHER REPAIRS		2,950.00	5,882.00
<b>TOTAL VI-B</b>	<b>\$1,837,960.00</b>	<b>\$1,744,729.06</b>	<b>\$1,820,021.00</b>
MANDATED COORDINATED EARLY INTERVENING 15	\$262,350.00	255,711.85	273,184.00
MANDATED PRIVATE SCHOOL PROPORTIONATE SH	\$17,957.00	0.00	38,885.00
MEDICAID FUNDING	BUDGET/CARRYOVER	ANNUAL	BUDGET
	2010-2011	FINANCIAL	2011-2012
SALARIES/FRINGE	\$32,479.11	32,479.11	10,000.00
PROFESSIONAL SERVICES	\$60,193.16	60,193.16	5,000.00
TRAVEL EXPENSES	\$1,778.62	1,778.62	
SUPPLIES	\$4,702.08	4,702.08	15,000.00
EQUIPMENT	\$2,010.20	2,010.20	
OTHER			
<b>TOTAL</b>	<b>\$101,163.17</b>	<b>\$101,163.17</b>	<b>\$30,000.00</b>
ADMINISTRATIVE MEDICAID CLAIMING	BUDGET	ANNUAL	BUDGET
	2010-2011	FINANCIAL	2011-2012
SALARIES/FRINGE	\$48,089.95	17,166.18	109,765.00

**FAYETTEVILLE PUBLIC SCHOOLS  
SPECIAL EDUCATION  
2010-2011 ANNUAL FINANCIAL AND 2011-2012 PROJECTED BUDGETS**

ARRA IDEA (STIMULUS)	CARRYOVER 2010-2011	ANNUAL FINANCIAL	BUDGET 2011-2012
2009-2011			
SALARIES/FRINGE 2 STAFF	\$263,397.00	196,950.41	36,005.00
PROFESSIONAL DEVELOPMENT	\$56,586.00	62,916.31	19,508.00
TRAVEL	\$29,606.00	9,031.32	21,745.00
SUPPLIES	\$492,001.00	268,846.29	102,946.00
EQUIPMENT	\$46,343.00	161,469.53	5,292.00
OTHER REPAIRS		3,222.88	0.00
<b>TOTAL BUDGET (2YEARS)</b>	<b>\$887,933.00</b>	<b>\$702,436.74</b>	<b>\$185,496.00</b>
0.0087% PRIVATE SCHOOL MANDATE	PRIVATE SCHOOL \$14171	13,140.24	1,576.76
ARRA CEIS (STIMULUS)	CARRYOVER 2010-2011	ANNUAL FINANCIAL	BUDGET 2011-2012
2009-2011			
SALARIES/FRINGE 1 STAFF	\$108,719.00	89,986.37	20,601.00
PROFESSIONAL DEVELOPMENT	\$10,845.00	1,501.95	340.00
TRAVEL	\$10,724.00	2,610.92	2,471.00
SUPPLIES	\$73,680.00	25,831.72	36,423.00
EQUIPMENT	\$5,300.00	29,501.60	
<b>TOTAL BUDGET (2YEARS)</b>	<b>\$209,268.00</b>	<b>\$149,432.56</b>	<b>\$59,835.00</b>

**ARKANSAS DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION  
LOCAL SCHOOL DISTRICT BUDGET APPLICATION  
FOR THE PROVISION OF  
SPECIAL EDUCATION AND RELATED SERVICES  
FOR SCHOOL YEAR 2011-12**

<u>Fayetteville School District</u>	<u>7203</u>
<b>Name of Public Agency</b>	<b>LEA Number</b>
<u>1000 Stone St.</u>	<u>Fayetteville, AR 72701</u>
<b>Street Address or Mailing Address</b>	<b>City</b> <b>Zip</b>
<u>Debra Wilson, Director of Special Services</u>	<u>(479) 444-3000</u>
<b>Name of Contact Person Regarding This Application</b>	<b>Phone Number</b>
<u>debra.wilson@fayar.net</u>	
<b>E-mail Address (type or print legibly)</b>	

**STATEMENT OF INTENT**

This application is submitted in fulfillment of Ark. Code Ann. 6-20-310; the Individuals with Disabilities Education Act (IDEA) amendments of 2004; and the rules and regulations promulgated by the Arkansas State Board of Education which are applicable. Upon approval by the Arkansas Department of Education, Special Education Office, this document shall certify the public agency's authority to expend state and federal funds for the education of children with disabilities in accordance with the assurances, budget and program of services set forth herein. On this date the agency has adopted *Special Education and Related Services: Procedural Requirements and Program Standards*, 2008, and *Special Education Eligibility Criteria and Program Guidelines for Children with Disabilities, Ages 3-21*, 2008, and subsequent rules and regulations adopted by the State Board of Education, as regulations for the administration of the special education program.

The signatures below are verification that the agency has reviewed and adopted the policies and procedures relative to children with disabilities covered in the pre-printed *Special Education Assurances and Agreements*. Any additional policies and procedures adopted by the agency relative to children with disabilities not covered in the pre-printed *Special Education Assurances and Agreements* are enclosed in this application.

Vicki Thomas  
**Name of Superintendent**

Susan Heil  
**Name of Board President**

**Signature of Superintendent**

**Signature of Board President**

**Date Signed**

**Date Approved by Board**

The signature of the Board President signifies that the Board has voted approval of the application. Such vote should be recorded in Board meeting minutes and kept on file at the co-op or district.

**SPECIAL EDUCATION ASSURANCES AND AGREEMENTS  
FOR SCHOOL-AGE SERVICES  
FISCAL YEAR 2011-12**

**Adoption of Procedures:** The applicant agrees to implement *Special Education and Related Services: Procedural Requirements and Program Standards* and *Special Education Eligibility Criteria and Program Guidelines for Children with Disabilities, Ages 3-21* to ensure that it provides special education services to enable children with disabilities to participate in regular educational programs and that each child has a properly developed individualized education program.

**Adjustment to Local Fiscal Effort:** If eligible to do so, the applicant, in accordance with 20 U.S.C.A. §1413, assures that funds it uses to offset maintenance of effort requirements comply with the provisions of Part B of IDEA 2004.

**Assistive Technology:** The applicant assures that assistive technology devices or assistive technology services, or both, as defined in 20 U.S.C.A. §1401, are made available to a child with a disability if required.

**Complaint Procedures of the State:** The applicant, in accordance with 20 U.S.C.A. §1415, assures that it will provide a copy of the written procedures for Complaint Management to parents of students with disabilities when they are notified of their procedural safeguards.

**Coordination of Projects:** The applicant, in accordance with EDGAR 34 CFR 76.580, assures, to the extent possible, it coordinates each of its projects with other activities that are in the same geographic area served by the project and targeted groups.

**Excess Cost:** The applicant, in accordance with 20 U.S.C.A. §1413, assures that funds provided under Part B of IDEA 2004 will be used only for excess costs.

**Extended School Year:** The applicant, in accordance with 20 U.S.C.A. §1415, shall ensure that extended school year services are available as necessary to provide a free appropriate public education.

**Highly Qualified Personnel:** The applicant assures that all personnel necessary to carry out Part B of IDEA 2004 within the jurisdiction of the agency are appropriately and adequately prepared and trained consistent with the requirements of 20 U.S.C.A. §1412.

**Information for State Education Agency:** The applicant, in accordance with 20 U.S.C.A. §1413, assures that information necessary for the state education agency to carry out its duties under 20 U.S.C.A. §1412 shall be provided.

**Special Education  
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**Least Restrictive Environment:** The applicant, in accordance with 20 U.S.C.A. §1412, assures it has adopted the policies and procedures of *Special Education and Related Services: Procedural Requirements and Program Standards*, Section 13, pages 1 and 2; and Section 17, pages 1-3.

**Responsibility of LEA:** The applicant assures that any child with a disability who is placed in or referred to a private school or facility by the public agency is provided special education and related services in conformance with an IEP that meets state and federal requirements, at no cost to the parents, is provided an education that meets the standards that apply to education provided by the SEA/LEA, and has all of the rights of a child with a disability who is served by a public agency.

**Maintenance of Effort:** The applicant assures, in accordance with 20 U.S.C.A. §1413, that funds provided under Part B of IDEA 2004 will not be used to reduce the level of financial effort for the education of children with disabilities from local funds below the level of those expenditures for the preceding fiscal year and that additional state funds made available to the special education program through Acts of the Arkansas General Assembly will not be used to reduce the preceding level of financial effort.

**Nondiscrimination and Employment of Individuals with Disabilities:** The applicant assures that the program assisted under Part B of IDEA 2004 will be operated in compliance with Title 45 of the Code of Federal Regulations, Part 84.

**Nonsupplanting:** The applicant, in accordance with 20 U.S.C.A. §1412, assures that funds provided under Part B of IDEA 2004 will be used to supplement the level of State and Local funds expended for the education of children with disabilities, and in no case to supplant those State and Local funds.

**Permissive Use of Funds (PUF):** The applicant assures that any Part B funds utilized under the PUF provisions of 20 U.S.C.A. §1413 are consistent with, and adhere to, state and federal law and regulation.

**Policies and Programs Consistent with Eligibility Provisions:** The applicant, in accordance with 20 U.S.C.A. §1413, assures that it has in effect policies, procedures and programs that are consistent with State policies and procedures established under 20 U.S.C.A. §1412.

**Procedural Safeguards:** The applicant incorporates by reference the procedures of the state education agency in *Special Education and Related Services: Procedural Requirements and Program Standards*, Sections 4 through 16.

**Protection in Evaluation Procedures:** The applicant adopts by reference the procedures of the state education agency in *Special Education and Related Services: Procedural Requirements and Program Standards*, Sections 4, 6 and 7.

**Special Education  
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**Public Control of Funding:** The applicant assures that control of funds provided under Part B of IDEA 2004 and State/Local funds committed to Special Education in accordance with Ark. Code Ann. 6-20-310 and title to property acquired with those funds is in a public agency for the uses and purposes authorized and as provided in the Arkansas Department of Education, School and Educational Service Cooperative Financial Accounting Manual.

**Records, Reports, and Public Information:** The applicant, in accordance with 20 U.S.C.A. §1413, assures that it will provide information as may be necessary to enable the state education agency to perform its duties under 20 U.S.C.A. §1412. The applicant assures that such records as the state educational agency may require to ensure the correctness and verification of the information are maintained and available. The applicant assures that all documents relating to the eligibility of the applicant under Part B of IDEA 2004 are available to parents of children with disabilities and to the general public.

**Retention of Records:** Education Department General Administrative Regulations (EDGAR) 34 CFR 76.734 requires that recipients of IDEA-B funds retain for five (5) years after completion of the activity for which they use grant or subgrant funds any record needed to fully show compliance with program and administrative requirements.

**School-Wide Programs Under Title I of ESEA:** The applicant, in accordance with 20 U.S.C.A. §1413, assures that funds it uses to carry out a school-wide program under Section 1114 of the Elementary and Secondary Act of 1965 will conform to the conditions for the use of the funds under Part B of the IDEA 2004.

**Transition Services:** The applicant assures that transition services, as defined at 20 U.S.C.A. §1414, are designed within a results-oriented process that is focused on improving academic and functional achievement of children with disabilities to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational....education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation and is based on the individual child's needs.

**Treatment of Charter Schools and Their Students:** The applicant, in accordance with 20 U.S.C.A. §1413, assures that when a public school in its jurisdiction is a charter school, the LEA will serve children with disabilities attending those schools in the same manner as its other schools and will provide funds under Part B of IDEA 2004 to those schools in the same manner as it provides those funds to its other schools.

**Access To and Purchase of Instructional Materials:** The applicant, in accordance with 34 Code of Federal Regulations §300.210 (a) and (b), assures that it will coordinate with the State education agency (Arkansas Department of Education, Special Education) and the National Instructional Materials Access Center (NIMAC) and will take all reasonable steps to provide instructional materials to blind persons or other persons with print

**Special Education  
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disabilities in a timely manner.

**Records Regarding Migratory Children with Disabilities:** The agency must cooperate in the Secretary's effort under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the States, health and educational information regarding those children.

**General Education Provisions Act:** The applicant assures that it will comply with the assurances set forth below as stated in the General Education Provisions Act in compliance with 20 U.S.C.A. §1232 e(b)(3),(5),(7),(A)&(B),(8) and (9). The general application submitted by the public agency under subsection (a) incorporates by explicit agreement these assurances:

- 1) That the local education agency will administer each program covered by the application in accordance with all applicable statutes, regulations, program plans and applications;
- 2) That the control of funds provided to the local education agency under each program and title to property acquired with those funds will be in a public agency and that a public agency will administer those funds and property;
- 3) That the local education agency will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to that agency under each program;
- 4) That the local education agency will make reports to the State agency or board and to the Commissioner as may reasonably be necessary to enable the State agency or board and the Commissioner to perform their duties and that the local educational agency will maintain such records, including the records required under Section 437, and provide access to those records, as the State agency or board or the Commissioner deem necessary to perform their duties;
- 5) That the local education agency will provide reasonable opportunities for the participation by teachers, parents, and other interested agencies, organizations, and individuals in the planning for an operation of each program;
- 6) That any application, evaluation, periodic program plan or report relating to each program will be made readily available to parents and other members of the general public;
- 7) That the local educational agency has adopted effective procedures for acquiring and disseminating to teachers and administrators participating in each program significant information from educational research, demonstrations, and similar projects, and for adopting, where appropriate, promising educational practices developed through such

**Special Education  
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projects; and

- 8) That none of the funds expended under any applicable program will be used to acquire equipment (including computer software) in any instance in which such acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity or its employees or any affiliate of such an organization.

**Notice of Required Actions by the SEA**

*The SEA is required under Part B of IDEA 2004 to provide notice to LEAs of the following actions:*

**Direct Services by the State Education Agency:** The Arkansas Department of Education (ADE), Special Education Unit has the responsibility to ensure that the provisions of a free appropriate public education (FAPE) are met for eligible students with disabilities, ages 3 – 21. Consistent with the provisions of 20 U.S.C.A. §1412, a State Education Agency (SEA) shall use the payments that otherwise would have been available to an LEA or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that local agency, or for whom that State agency is responsible, if the SEA determines that the LEA or State agency –

- a. Has not provided the information needed to establish the eligibility of the agency under Part B of the Act;
- b. Is unable to establish and maintain programs of FAPE that meet the requirements of this part;
- c. Is unable or unwilling to be consolidated with one or more LEAs in order to establish and maintain the programs; or
- d. Has one or more children with disabilities who can best be served by a regional or State program or service-delivery system designed to meet the needs of these children.

When it is brought to the attention of the ADE through:

- a. The enforcement of a decision from an Impartial Due Process Hearing;
- b. A complaint investigation under the Complaint Procedures of the State;
- c. Compliance monitoring of a public agency; or
- d. A request from a parent or public agency that the SEA assume the responsibility for Direct Services;

the ADE, Special Education Unit will implement the following procedures before final action is taken by the ADE to assume the provision of Direct Services to an eligible student(s) with disabilities, ages 3 – 21.

**Special Education  
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1. The Associate Director for Special Education will:
  - a. Provide written notice to the public agency that the SEA has reason to suspect that it is not providing a free appropriate public education to an eligible student(s) with disabilities, ages 3 – 21, on the basis of one or more of the conditions set forth in 20 U.S.C.A. §1412
  - b. State the source(s) of the information that has led the SEA to suspect that the district is not providing a free appropriate public education for the student(s) in question.
  - c. Appoint a Team to conduct an investigation of the situation/complaint.
2. The Investigative Team will review the public agency's provision of FAPE in light of the conditions set forth in 20 U.S.C.A. §1412.
3. The Team will follow the procedures the ADE has adopted for its Complaint Procedures of the State, as provided for in 20 U.S.C.A. §1412.
4. The Team will provide a written report and submit it to the Associate Director.
5. Following receipt of the report, the Associate Director will notify the parties concerned as to the findings of the Investigative Team.
6. Should sufficient evidence exist to demonstrate that the public agency is not providing FAPE as a result of a condition in 20 U.S.C.A. §1412, the Associate Director will notify the public agency that the ADE intends to take the necessary steps to provide Direct Services to an eligible student(s) with disabilities, ages 3 – 21, within the jurisdiction of the public agency.
7. The public agency will be provided notice that it has the opportunity for a hearing on this matter before the State's chief education official, (the Director of the ADE), or his/her designee.
8. To avail itself of the opportunity for a hearing on the proposed provision of Direct Services by the ADE, the Chief Administrative Official of the Public Agency must submit a written request for a hearing to the Associate Director for Special Education within 30 days of notice of the proposed action by the ADE.
9. Within ten (10) business days of receipt by the Associate Director of a written request by the public agency for a hearing, the ADE Director will set a mutually agreeable date, time and location for the hearing and advise the Chief Administrative Official of the Public Agency of this in writing.
10. The ADE Director, or designee, will consider the evidence presented by the Chief Administrative Official of the public agency and the Associate Director for Special Education, or designee.

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11. Within ten (10) business days of completion of the hearing, the ADE Director will submit written findings of fact, the decision and reasons for the ruling with regard to the provision of Direct Services by the ADE, in compliance with 20 U.S.C.A. §1412.
12. If the ADE determines that its action was contrary to state or federal statutes or regulations that govern the applicable program, the ADE shall rescind its action.
13. Public agencies will be notified of their right to appeal a decision of the ADE Director to withhold IDEA – Part B funds to the Secretary of Education, U.S. Department of Education.
14. The public agency must file a notice of the appeal with the Secretary within 20 days after the public agency has been notified by the ADE Director of the final decision of the hearing.
15. The Associate Director for Special Education will advise the Administrator, Grants and Data Management, in writing as to when to withhold and when to restore IDEA – Part B payments to the public agency.

When the ADE has determined that it will assume the provision of Direct Services to ensure FAPE, the ADE may provide special education and related services in such a manner and at such locations (including regional or State centers) as the ADE considers appropriate.

**Local Educational and State Agency Compliance:** If the SEA, in accordance with 20 U.S.C.A. §1412, after reasonable notice and an opportunity for a hearing, finds that a LEA or state agency that has been determined to be eligible under this section is failing to comply with any requirement described in 20 U.S.C.A. §1412, the SEA shall reduce or may not provide any further payments to the LEA or state agency until the SEA is satisfied that the LEA or state agency is complying with that requirement. Any state agency or LEA in receipt of a notice described in the first paragraph of this section shall, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency. In carrying out its function under this section, the SEA shall consider any decision resulting from a hearing under 20 U.S.C.A. §1412 that is adverse to the LEA or state agency involved in the decisions.

**The public agency will acknowledge receipt of this information by signing the certification on the following page.**

**Special Education  
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**CERTIFICATION**

**1, THE UNDERSIGNED AUTHORIZED REPRESENTATIVE, HEREBY CERTIFY THAT THE APPLICANT AGENCY'S GOVERNING BODY HAS ADOPTED THE ABOVE ASSURANCES AND IS AWARE OF REQUIRED ACTIONS BY THE SEA RELATIVE TO DIRECT SERVICES AND LEA COMPLIANCE.**

Fayetteville School District  
Public Agency Name

7203  
LEA #

Director/Superintendent's Signature

Date

After signature, submit this page to:  
**GRANTS AND DATA MANAGEMENT**

Along with your signed Statement of Intent and Certification Regarding Lobbying form.

**CERTIFICATION REGARDING LOBBYING**

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Applicants must review the requirements for certification regarding lobbying included in the regulations cited below before completing this form. Applicants must sign this form to comply with the certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying." This certification is a material representation of fact upon which the Department of Education relies when it makes a grant or enters into a cooperative agreement.

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As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a Federal contract, grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants and contracts under grants and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certification.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
Vicki Thomas, Superintendent of Schools	
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE



September 22, 2011

## ACSIP Statement of Assurance

TO:           Board of Education  
FROM:        Kay Jacoby

I will ask the Board to approve the ACSIP Statement of Assurance.



**ARKANSAS DEPARTMENT OF EDUCATION  
ASSURANCES FOR PROGRAMS UNDER  
THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965,  
AS AMENDED BY THE  
NO CHILD LEFT BEHIND ACT OF 2001  
PUBLIC LAW 107-110**

The Arkansas Comprehensive School Improvement Plan (AC SIP) is for local education agency (LEA) use in requesting district funds for covered programs under the *No Child Left Behind Act of 2001* (AC SIP also serves as the local schools schoolwide plan, targeted plan and/or school or LEA improvement plan). To assure the LEA's eligibility for funds included in AC SIP, the Superintendent must provide an original signature attesting to compliance with all assurances applicable to each program for which the plan is submitted. The Neglected or Delinquent (Title I, Part D Subpart II), Technology (Title II, Part D) and McKinney-Vento Homeless Education Program applications are submitted **separately**. Please read and consider each item carefully as the LEA will be held accountable.

**All General Assurances must be checked. The certification line of each Title section must be checked. Please note that for each Title section not checked, funding will not be allocated.**

District Name Fayetteville School District #1 LEA Code No. 7203000

**CERTIFICATIONS**

X I, the undersigned superintendent for the applicant school district, certify that:

1. The information provided in this application to support the following assurances is correct, so far as I am able to determine.
2. The LEA will abide by the provisions of the approved plan/application for No Child Left Behind funds.
3. As the prospective lower tier participant neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal. (Executive Order 12549, 34 CFR Part 85, Section 85,510)
4. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee on any agency, a member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement.
5. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
6. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.



## **GENERAL ASSURANCES**

**X I, the undersigned Superintendent for the above named LEA, hereby, assure the Arkansas Department of Education that:**

1.  Each such program will be administered in accordance with all applicable statutes, regulations, program plans, and applications.
2.  The LEA will comply with all applicable supplement not supplant and maintenance of effort requirements. §9521 – IV.B.1
  - (a) The control of funds provided under each program and title to property acquired with program funds will be in a public agency, a non-profit private agency, institution, organization, or Indian tribe, if the law authorizing the program provides for assistance to those entities;
  - (b) the public agency, non-profit private agency, institution or organization, or Indian tribe will administer the funds and property to the extent required by the authorizing law.
3.  The LEA will adopt and use proper methods of administering each such program, including (a) the enforcement of any obligations imposed by law on agencies, institutions, organizations, and other recipients responsible for carrying out each program; and (b) the correction of deficiencies in program operations that are identified through audits, monitoring, or evaluation.
4.  The LEA will cooperate in carrying out any evaluation of each such program conducted by, or for, the State educational agency, the Secretary, or other Federal officials.
5.  The LEA will use such fiscal control and fund accounting procedures as will ensure proper disbursement of, and accounting for, Federal funds paid to the applicant under each such program.
6.  The LEA will – (a) submit such reports to the State educational agency (which shall make the reports available to the Governor) and the Secretary as the State educational agency and Secretary may require to enable the State educational agency and Secretary to perform their duties under each such program; and (b) maintain such records, provide such information and afford such access to the records as the State educational agency (after consultation with the Governor) or the Secretary may reasonably require to carry out the State educational agency's or the Secretary's duties.
7.  The LEA has consulted with teachers, school administrators, parents, and others in the development of the local consolidated application/LEA Plan to the extent required under Federal law governing each program included in the consolidated application/LEA Plan.
8.  Before the application was submitted; the LEA afforded a reasonable opportunity for public comment on the application and considered such comment.

## **TITLE I, PART A – Improving Basic Programs Operated by LEAs**

**X I, the undersigned Superintendent for the above named LEA, hereby, assure the Arkansas Department of Education that:**



1. The LEA will participate, if selected, in the State National Assessment of Educational Progress in 4th and 8<sup>th</sup> grade reading and mathematics carried out under section 411(b)(2) of the National Education Statistics Act of 1994.
2. If the LEA receives more than \$500,000 in Title I funds, it will allow 1% to carry out NCLB Section 1118, Parent Involvement, including promoting family literacy and parenting skills; 95% of the allocation will be distributed to schools.
3. The LEA will inform eligible schools and parents of schoolwide program authority and the ability of such schools to consolidate funds from Federal, State, and local sources.
4. Technical assistance and support will be provided to schoolwide programs.
5. Pursuant to section 1114, the LEA will work in consultation with schools as the schools develop the schools' plans and assist schools as the schools implement such plans or undertake activities pursuant to section 1115 so that each school can make adequate yearly progress toward meeting the State student academic achievement standards.
6. The LEA will fulfill such agency's school improvement responsibilities under section 1116, including taking actions under paragraphs (7) and (8) of section 1116(b).
7. Services to eligible children attending private elementary schools and secondary schools will be provided in accordance with section 1120, and timely and meaningful consultation with private school officials regarding such services.
8. The LEA will take into account the experience of model programs for the educationally disadvantaged, and the findings of relevant scientifically based research indicating that services may be most effective if focused on students in the earliest grades at schools that receive funds under this part.
9. If the LEA chooses to use funds under this part to provide early childhood development services to low-income children below the age of compulsory school attendance, that such services comply with the performance standards established under section 641A(a) of the Head Start Act.
10. The LEA will work in consultation with schools as the schools develop and implement their plans or activities under sections 1118 and 1119.
11. The LEA will comply with requirements regarding the qualifications of teachers and paraprofessionals and professional development. §1112(c)(1) - (III.B.2)
12. The LEA will inform eligible schools of the local educational agency's authority to obtain waivers on the school's behalf under Title IX.
13. The LEA will coordinate and collaborate with the State educational agency and other agencies providing services to children, youth, and families with respect to a school in school improvement, corrective action, or restructuring under section 1116 if such a school requests assistance from the local educational agency in addressing major factors that have significantly affected student achievement at the school.
14. Through incentives for voluntary transfers, the provision of professional development recruitment programs, or other effective strategies, that low-income students and minority students are not taught at higher rates than other students by unqualified, out-of-field, or inexperienced teachers. §1112(c)(1L) - (III.B.2)



15. The results of the student academic assessments required under section 1111(b)(3), and other measures or indicators available to the agency will be used to review annually the progress of each school served by the agency and receiving funds under this part to determine whether all of the schools are making the progress necessary to ensure that all students will meet the State's proficient level of achievement on the State academic assessments described in section 1111(b)(3) within 12 years from the baseline year described in section 1111(b)(2)(E)(ii).
16. That the results from the academic assessments required under section 1111(b)(3) will be provided to parents and teachers as soon as is practicably possible after the test is taken, in an understandable and uniform format and, to the extent practicable, provided in a language or other mode of communication that the parents can understand.
17. The LEA will assist each school served by the agency and assisted under this part in developing or identifying examples of high-quality, effective curricula consistent with section 1111(b)(8)(D).
18. Schools in school improvement status will spend not less than ten percent of their Title I funds to provide professional development (in the area[s] of identification to teachers and principals) for each fiscal year.
19. Where applicable, the applicant will comply with the **comparability of services** requirement under section 1120A(c). In the case of a local educational agency to which comparability applies, the applicant has established and implemented an agency-wide salary schedule; a policy to ensure equivalence among schools in teachers, administrators, and other staff; and a policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies. Documentation will be on file to demonstrate that the salary schedule and local policies result in comparability and will be updated biennially.
20. The LEA will require each principal of each Title I school – whether operating as a targeted assistance or schoolwide program – to attest annually that the school is in compliance with Section 1119 regarding the qualifications of its teachers and paraprofessional staff and will maintain such documentation at the school site and at the LEA office to be available by public request. **(All Title I teachers must be highly qualified at the time of hire. In a schoolwide program, all teachers are Title I teachers.)**
21. The LEA will require each principal of each Title I school – whether operating as a targeted assistance or schoolwide program – to provide to each individual parent timely notice that the parent's child has been taught for four or more consecutive weeks by a teacher who is not highly qualified (section 111(h)(6) PARENTS RIGHT TO KNOW, paragraph B), §1111(h)(16)(IB)(ii) and AR Code §6-17-309; LIC 07-005

**TITLE I, PART D – Children or Youth who are Neglected, Delinquent or At-Risk**  
**(Applicable to those LEAs that have projects funded under this part)**

X *I, the undersigned superintendent for the above named local educational agency (LEA), assure the Arkansas Department of Education that:*

1. The LEA will carry out high quality education programs to prepare youth for secondary school completion, training, employment, or further education.
2. Children and youth will be provided activities to facilitate the transition of such youth from the correctional program to further education or employment.



3. The LEA will operate dropout prevention programs in local schools for youth at risk of dropping out of school and youth returning from correctional facilities, if applicable.
4. The LEA will administer the Title I program to assist students residing in a local institution for delinquent children in accordance with the applicable Assurances and Certifications in the LEA Plan.
5. The LEA will assist in locating alternative programs through which students can continue their education if the students are not returning to school after leaving the correctional facility or institution for neglected or delinquent children and youth.
6. The LEA will work with parents to secure parents' assistance in improving the educational achievement of their children and youth, and preventing their children's and youth's further involvement in delinquent activities.
7. The LEA will work with children and youth with disabilities in order to meet an existing individualized education program and an assurance that the agency will notify the child's or youth's local school if the child or youth —
  - (A) Is identified as in need of special education services while the child or youth is in the correctional facility or institution for neglected or delinquent children and youth; and
  - (B) Intends to return to the local school.
8. The LEA will work with children and youth who dropped out of school before entering the correctional facility or institution for neglected or delinquent children and youth to encourage the children and youth to reenter school once the term of the incarceration is completed or provide the child or youth with the skills necessary to gain employment, continue the education of the child or youth, or achieve a secondary school diploma or its recognized equivalent if the child or youth does not intend to return to school.
9. Teachers and other qualified staff are trained to work with children and youth with disabilities and other students with special needs taking into consideration the unique needs of such students.
10. The programs under this subpart will be coordinated with any programs operated under the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.) or other comparable programs, if applicable.
11. The LEA shall reserve not less than 15 percent and not more than 30 percent of the amount such agency receives under this part for the provision of transition services.

**TITLE II, PART A - Preparing, Training and Recruiting High Quality Teachers and Principals**

X *I, the undersigned Superintendent for the above named LEA, hereby, assure the Arkansas Department of Education that:*

1. The LEA will target funds to schools with the jurisdiction of the local education educational agency that have the lowest proportion of highly qualified teachers, have the largest average class size, or are identified for school improvement under section 1116(b).
2. The LEA will comply with section 9501 (regarding participation by private school children and teachers).
3. The LEA conducted a comprehensive and collaborative needs assessment that involved teachers, paraprofessionals, principals, parents and other relevant school personnel. The results are used to create a plan that increases the number of highly qualified teachers in



every classroom in core academic subjects, increase the percentage of teachers participating in high quality professional development including training on effective instructional strategies and in use of State academic content standards and assessments. (Section 2122(c))

4. The plan demonstrates the integration of other relevant Federal, State and local program funds. (Section 2122(3)(4)).
5. The LEA developed and incorporated in their plan an assessment that provides for annual yearly progress that objectively measures the impact of authorized activities such as professional development, teacher and principal incentives, class size reduction, recruitment and training of teachers, and how it results in significantly closing the achievement gap of low income and minority students from other students. (Section 1119(b)(1)(A))
6. The LEA plan, and authorized activities, gives priority of resources for professional development and authorized activities to teachers in low-performing schools. (Section 2122(3)(c))
7. The LEA will use funds to meet the requirements contained in Title II, Part A, and all other applicable provisions of the ESEA Reauthorization of 2001 and will submit necessary documentation of compliance with requirements upon request. (Section 2121)
8. All teachers paid with Title II, Part A funds for class size reduction are highly qualified. §2123(a)(2)(B) – (I.5)

#### **TITLE II, PART D – Educational Technology**

**(Applicable to those LEAs that have projects funded under this part)**

**I, the undersigned Superintendent for the above named LEA, hereby, assure the Arkansas Department of Education that:**

1. The LEA has an updated, local, long-range, strategic, educational technology plan in place that addresses local initiatives and is consistent with the objectives of the statewide technology plan.
2. The LEA will maintain records that disclose the type and cost of technology acquired with Educational Technology Funds.
3. The LEA will target funds available under this part to ensure funds will be used to carry out activities consistent with the program and the LEAs local technology plan.
4. A minimum of 25% of funds will be used to provide ongoing, sustained, and intensive high quality professional development in the integration of advanced technology into curricula and instruction and in using those technologies to create new learning environments.
5. The LEA will collaborate with adult literacy service providers.
6. Technology related efforts funded through sources other than Title II-D are consistent with best practice as outlined in the local technology plan.

#### **TITLE III, Part A – Language Acquisition and Language Enhancement**

**(Applicable to those LEAs that have projects funded under this part)**



X **I, the undersigned Superintendent for the above named LEA, hereby, assure the Arkansas Department of Education that:**

1. The LEA assures that all teachers in any language instruction program for limited English proficient (LEP) children are fluent in English and any other language used for instruction, including written and oral communications skills.
2. Programs funded under this part will develop and implement research-based language instruction programs and academic content instruction programs for LEP students.
3. The LEA will comply with the parental notification provisions under section 3302 throughout the school year.
4. The LEA will annually assess the English language proficiency of LEP students to ensure students are making adequate yearly progress using a valid and reliable instrument.
5. The LEA program is designed to enable LEP students to speak, read, write, and comprehend the English Language and to meet Arkansas Academic Standards.
6. The LEA is compliant with all State laws and rules, including federal civil rights laws and rules regarding the education of limited-English-proficient students, consistent with Sections 3126 and 3127.

**TITLE IV, PART A – Safe and Drug Free Schools and Communities**

**I, the undersigned Superintendent for the above named LEA, hereby, assure the Arkansas Department of Education that:**

1. The LEA drug and violence prevention programs supported under this subpart convey a clear and consistent message that acts of violence and the illegal use of drugs are wrong and harmful.
2. The LEA and schools to be served have, a plan for keeping schools safe and drug-free that includes--
  - (A) appropriate and effective school discipline policies that prohibit disorderly conduct, the illegal possession of weapons, and the illegal use, possession, distribution, and sale of tobacco, alcohol, and other drugs by students;
  - (B) security procedures at school and while students are on the way to and from school;
  - (C) prevention activities that are designed to create and maintain safe, disciplined, and drug-free environments;
  - (D) a crisis management plan for responding to violent or traumatic incidents on school grounds; and
  - (E) a code of conduct policy for all students that clearly states the responsibilities of students, teachers, and administrators in maintaining a classroom environment that--
    - (i) allows a teacher to communicate effectively with all students in the class;
    - (ii) allows all students in the class to learn;
    - (iii) has consequences that are fair, and developmentally appropriate;
    - (iv) considers the student and the circumstances of the situation; and
    - (v) is enforced accordingly.
3. The activities or programs to be funded will comply with the required principles of effectiveness.



4. The LEA application and any waiver request under section 4115(a)(3) will be available for public review after submission of the application; and such other assurances, goals, and objectives identified through scientifically based research that the State may reasonably require in accordance with the purpose of this part.
5. Funds under this subpart will be used to increase the level of State, local, and other non-Federal funds that would, in the absence of funds under this subpart, be made available for programs and activities authorized under this subpart, and in no case supplant such State, local, and other non-Federal funds.

**X      McKinney-Vento Homeless Education Program**  
(Applicable to those LEAs that have projects funded under this part)

1. The LEA will adopt policies and practices to ensure that homeless children and youths are not stigmatized or segregated on the basis of their status as homeless.
2. The LEA will designate an appropriate staff person as an LEA liaison for homeless children and youths, to carry out the duties described in Title X, Part C, section 722, paragraph (6)(A).
3. The LEA will adopt policies and practices to ensure that transportation is provided, at the request of the parent or guardian (or in the case of an unaccompanied youth, the liaison), to and from the school of origin in accordance with the provisions of Title X, Part C, section 722, paragraph (6)(J)(ii).
4. The LEA will adopt policies and practices to ensure immediate enrollment of homeless children and youth in accordance with all applicable statutes, regulations, program plans and applications.

**BOARD APPROVAL AND SUPERINTENDENTS SIGNATURE**

The School Board of Fayetteville School District #1 approved and recorded in its minutes the set of assurances stated above at a meeting held on 9/22/2011 and further authorized the Superintendent to sign such assurances as required by Section 9306 and to submit an Arkansas Comprehensive School Improvement Plan (application) to the Arkansas Department of Education as required by Section 9305.

**Vicki Thomas, Superintendent**

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Superintendent (Typed Name)

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Superintendent Signature

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Date



September 22, 2011

## Policy Additions & Revisions

TO: Board of Education

FROM: Ginny Wiseman

Due to the Standards and Assurance monitoring visit in October, I will ask the Board to approve the following new policies:

- 5.13 Privacy of Students' Records/Directory Information
- 5.25 Student Dress and Grooming
- 5.52 Foster Children
- 5.53 Placement of Multiple Birth Siblings
- 5.9 School Choice

In addition, I will ask the Board to approve revisions to the following policies:

- 5.1 Residence Requirements
- 5.12 Student Organizations
- 5.15 Contact with Students
- 5.2 Entrance Requirements
- 5.3 Compulsory Attendance
- 5.32 Search, Seizure and Interrogations
- 5.4 Student transfers
- 5.5 Attendance Requirements for Students in Grades 9-12
- 5.55 Grading
- 5.64 2016 Graduation Requirements



## 5.13—PRIVACY OF STUDENTS' RECORDS/DIRECTORY INFORMATION

Except when a court order regarding a student has been presented to the district to the contrary, all students' educational records are available for inspection and copying by the parents of his/her student who is under the age of eighteen (18). At the age of eighteen (18), the right to inspect and copy a student's records transfers to the student. A student's parents or the student, if over the age of 18, requesting to review the student's education records will be allowed to do so within no more than forty five (45) days of the request.

The district forwards education records, including disciplinary records, to schools that have requested them and in which the student seeks or intends to enroll.

The district shall receive written permission before releasing education records to any agency or individual not authorized by law to receive and/or view the education records without prior parental permission. The District shall maintain a record of requests by such agencies or individuals for access to, and each disclosure of, personally identifiable information from the education records of each student. Disclosure of education records is authorized by law to school officials with legitimate educational interests. A personal record kept by a school staff member is **not** considered an educational record if it meets the following tests.

- it is in the sole possession of the individual who made it;
- it is used only as a personal memory aide; and
- information contained in it has never been revealed or made available to any other person, except the maker's temporary substitute.

For the purposes of this policy, a school official is a person employed by the school as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel); a person serving on the school board; a person or company with whom the school has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist); or a parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.

For the purposes of this policy a school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility, contracted duty, or duty of elected office.

The District discloses personally identifiable information from an education records to appropriate parties, including parents, in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. The superintendent or designee shall determine who will have access to and the responsibility for disclosing information in emergency situations.

When deciding whether to release personally identifiable information in a health or safety emergency, the District may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the District determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals.

For purposes of this policy, the Fayetteville School District does not distinguish between a custodial and noncustodial parent, or a non-parent such as a person acting in loco parentis or a foster parent with respect to gaining access to a student's records. Unless a court order restricting such access has been presented to the district to the contrary, the fact of a person's status as parent or guardian, alone, enables that parent or guardian to review and copy his child's records.

If there exists a court order which directs that a parent not have access to a student or his records, the parents, guardian, person acting in loco parentis, or an agent of the Department of Human Services must present a file-marked copy of such order to the building principal and the superintendent. The school will make good-faith efforts to act in accordance with such court order, but the failure to do so does not impose legal liability upon the school. The actual responsibility for enforcement of such court orders rests with the parents or guardians, their attorneys and the court which issued the order.



A parent or guardian does not have the right to remove any material from a student's records, but such parent or guardian may challenge the accuracy of a record. The right to challenge the accuracy of a record does not include the right to dispute a grade, which must be done only through the appropriate teacher and/or administrator, the decision of which is final. A challenge to the accuracy of material contained in a student's file must be initiated with the building principal, with an appeal available to the Superintendent or his designee. The challenge shall clearly identify the part of the student's record the parent wants changed and specify why he/she believes it is inaccurate or misleading. If the school determines not to amend the record as requested, the school will notify the requesting parent or student of the decision and inform them of their right to a hearing regarding the request for amending the record. The parent or eligible student will be provided information regarding the hearing procedure when notified of the right to a hearing.

Unless the parent or guardian of a student (or student, if above the age of eighteen (18) objects, directory information about a student may be made available to the public, military recruiters, post secondary educational institutions, prospective employers of those students, as well as school publications such as annual yearbooks and graduation announcements. "Directory information" includes, but is not limited to, a student's name, address, telephone number, electronic mail address, photograph, date and place of birth, dates of attendance, his/her placement on the honor role (or the receipt of other

types of honors), as well as his/her participation in school clubs and extracurricular activities, among others. If the student participates in inherently public activities (for example, basketball, football, or other interscholastic activities), the publication of such information will be beyond the control of the District. A student's name and photograph will only be displayed on the district or school's web page(s) after receiving the written permission from the student's parent or student if over the age of 18.

Each parent, legal guardian, or eligible student has the right to refuse to permit the release of the above information. If the parent, legal guardian, or eligible student wishes to restrict the release of the above information, he/she must inform the Principal's Office in writing within thirty (30) calendar days of receipt of this notice. An eligible student is one who has reached the age of 18 or is attending any school beyond the high school level.

The District is required to continue to honor any signed-opt out form for any student no longer in attendance at the district.

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

Legal References: A.C.A. § 9-29-113(b)(6)  
20 U. S.C. § 1232g  
20 U.S.C. § 7908 (NCLB Section 9528)  
34 CFR 99.3, 99.7, 99.31, 99.21, 99.22, 99.30, 99.31, 99.32, 99.33, 99.34, 99.35, 99.36,  
99.37, 99.63, 99.64

Cross References: [Policy 5.20 District Web Site](#)  
[Policy 5.20.1 Web Site Privacy Policy](#)  
[Policy 5.20 F1 Permission to Display Photo of Student on Web Site](#)

Date Adopted: 9-22-11



## **5.25 STUDENT DRESS AND GROOMING**

The Fayetteville Board of Education recognizes that dress can be a matter of personal taste and preference. At the same time, the District has a responsibility to promote an environment conducive to student learning. This requires limitations to student dress and grooming that could be disruptive to the educational process because they are immodest, disruptive, unsanitary, unsafe, or are offensive to common standards of decency.

Students are prohibited from wearing, while on the school grounds during the school day and at school-sponsored events, clothing that exposes underwear, buttocks, or the breast of a female. This prohibition does not apply, however to a costume or uniform worn by a student while participating in a school-sponsored activity or event.

Legal References:      A.C.A. § 6-18-502(c)(1)  
                            A.C.A. § 6-18-503(c)  
                            Act 835

Date Adopted: 9-22-11



## 5.52—STUDENTS WHO ARE FOSTER CHILDREN

The District will afford the same services and educational opportunities to foster children that are afforded other children and youth. The District shall work with the Department of Human Services (“DHS”), the ADE, and individuals involved with each foster child to ensure that he/she is able to maintain his/her continuity of educational services to the fullest extent that is practical and reasonable.

The Superintendent or his/her designee shall appoint an appropriate staff person to be the local educational liaison for foster children and youth whose responsibilities shall include ensuring the timely school enrollment of each foster child and assisting foster children who transfer between schools by expediting the transfer of relevant educational records.

The District, working with other individuals and agencies shall, unless the presiding court rules otherwise, ensure that the foster child remains in his/her current school, even if a change in the foster child’s placement results in a residency that is outside the district. In such a situation, the District will work to arrange for transportation to and from school for the foster child to the extent it is reasonable and practical.

Upon notification to the District’s foster care liaison by a foster child’s caseworker that a foster child’s school enrollment is being changed to one of the District’s schools, the school receiving the child must immediately enroll him/her. Immediate enrollment is required even if a child lacks the required clothing, academic or medical records, or proof of residency.

A foster child’s grades shall not be lowered due to absence from school that is caused by a change in the child’s school enrollment, the child’s attendance at dependency-neglect court proceedings, or other court-ordered counseling or treatment.

Any course work completed by the foster child prior to a school enrollment change shall be accepted as academic credit so long as the child has satisfactorily completed the appropriate academic placement assessment.

If a foster child was enrolled in a District school immediately prior to completing his/her graduation requirements while detained in a juvenile detention facility or while committed to the Division of Youth Service of DHS, the District shall issue the child a diploma.

Legal Reference A.C.A. § 9-28-113

Date Adopted: 9-22-11



## **5.53—PLACEMENT OF MULTIPLE BIRTH SIBLINGS**

The parent, guardian or other person having charge or custody of multiple birth siblings in grades pre-K through 6 may request that the multiple birth siblings are placed in either the same or separate classrooms. The request shall be in writing not later than the 14<sup>th</sup> calendar day prior to the first day of classes at the beginning of the academic year. The school shall honor the request unless it would require the school to add an additional class to the sibling's grade level. If one parent of multiple birth siblings requests a placement that differs from that of the other parent of the same multiple birth siblings, the school shall determine the appropriate placement of the siblings.

The school may change the classroom placement of one or more of the multiple birth siblings if:

- There have been a minimum of 30 instructional days since the start of the school year; and
- After consulting with each classroom teacher in which the siblings were placed, the school determines the parent's classroom placement request is:
  - Detrimental to the educational achievement of one or more of the siblings;
  - Disruptive to the siblings' assigned classroom learning environment; or
  - Disruptive to the school's educational or disciplinary environment.

If a parent believes the school has not followed the requirements of this policy, the parent may appeal the multiple birth siblings' classroom placement to the Superintendent. The Superintendent's decision regarding the appeal shall be final.

Legal Reference: [A.C.A. § 6-18-106](#)

Date Adopted: 9-22-11



## 5.9 SCHOOL CHOICE

### **Standard School Choice**

The superintendent will consider all applications for School Choice postmarked no later than July 1 proceeding the fall semester the applicant would begin school in the District. The superintendent shall notify the parent or guardian and the student's resident district, in writing, of the decision to accept or reject the application within 30 days of its receipt of application.

The District shall advertise in appropriate print and broadcast media to inform students and parents in adjoining districts of the range of possible openings available under the School Choice program. The public announcements shall state the application deadline and the requirements and procedure for participation in the program. Such announcements shall be made in the spring, but in no case later than June 1.

When considering applications, priority will be given to applications from siblings or stepsiblings residing in the same residence or household of students already attending the District through school choice.

The District may reject a nonresident's application for admission if its acceptance would necessitate the addition of staff or classrooms exceed the capacity of a program, class, grade level, or school building, or cause the District to provide educational services not currently provided in the affected school. The District shall reject applications that would cause it to be out of compliance with the applicable laws and regulations regarding desegregation. Letters of rejection shall state the reason(s) for the rejection.

The Board of Directors reserves the right to not allow any person who is currently under expulsion from another district to enroll in a District school.

Students admitted under this policy shall be entitled to continued enrollment until they graduate or are no longer eligible for enrollment in the District's schools. Any student admitted to this district under the provision of this policy who chooses to return to his/her resident district during the school year voids the transfer and must reapply for a school choice admission if desiring to return to this district in the future.

### **Opportunity School Choice**

Unless there is a lack of capacity at the District's school or the transfer conflicts with a federal desegregation order applicable to the District, a student who is eligible for transfer from a school identified under A.C.A. § 6-15-2103©(1) may enroll in a District school that has a performance category level 3 or higher as defined by A.C.A. 6-15-2103(a) provided the student's parent or guardian, or the student if over the age of eighteen (18) has successfully completed the necessary application process by July 30 preceding the year of desired enrollment.

For the purposes of this policy, a "lack of capacity" is defined as when the school district has reached the maximum student-to-teacher ratio allowed under federal, or state law, the rules for the Standards of Accreditation, or applicable rules.

A student's enrollment under the opportunity school choice provision is irrevocable for the duration of the school year and is renewable until the student completes high school or is beyond the legal age of enrollment. The District may provide transportation to and from the transferring district, but is not responsible for the cost of transporting the student if the student lives outside the District.



A.C.A. § 6-18-510

Date Adopted: **9-22-11**



## 5.1—RESIDENCE REQUIREMENTS

### Definitions:

“Reside” means to be physically present and to maintain a permanent place of abode for an average of no fewer than four (4) calendar days and nights per week for a primary purpose other than school attendance.

“Resident” means a student whose parents, legal guardians, persons having legal, lawful control of the student under order of a court, or persons standing in loco parentis reside in the school district.

“Residential address” means the physical location where the student’s parents, legal guardians, persons having legal, lawful control of the student under order of a court, or persons standing in loco parentis reside. A student may use the residential address of a legal guardian, person having legal, lawful control of the student under order of a court, or person standing in loco parentis only if the student resides at the same residential address and if the guardianship or other legal authority is not granted solely for educational needs or school attendance purposes.

The schools of the District shall be open and free through the completion of the secondary program to all persons between the ages of five (5) and twenty one (21) years whose parents, legal guardians, or other persons having lawful control of the person under an order of a court reside within the District and to all persons between those ages who have been legally transferred to the District for educational purposes.

Any person eighteen (18) years of age or older may establish a residence separate and apart from his or her parents or guardians for school attendance purposes.

In order for a person under the age of eighteen (18) years to establish a residence for the purpose of attending the District’s schools separate and apart from his or her parents, guardians, or other persons having lawful control of him or her under an order of a court, the person must actually reside in the District for a primary purpose other than that of school attendance. **However, a student previously enrolled in the district who is placed under the legal guardianship of a noncustodial parent living outside the district by a custodial parent on active military duty may continue to attend district schools. A foster child who was previously enrolled in a District school and who has had a change in placement to a residence outside the District, may continue to remain enrolled in his/her current school unless the presiding court rules otherwise.**

The children or wards of any person who is at least a half-time employee of this district or of the education coop to which the district belongs but reside in another district are eligible to enroll in District schools.

The Fayetteville School Board, on March 16, 1965, agreed to approve as policy the assignment of all elementary pupils to attend the school in the attendance area in which they live.

Legal References: A.C.A. § 6-18-202

A.C.A. § 6-18-203

**A.C.A. § 6-27-112**

**A.C.A. § 9-28-13**

Date Adopted: 8-28-03

Date Revised: 9-22-11



## 5.12 – STUDENT ORGANIZATIONS/EQUAL ACCESS

Non-curriculum related secondary school student organizations wishing to conduct meetings on school premises during non-instructional time shall not be denied equal access on the basis of the religious, political, philosophical, or other content of the speech at such meetings. Such meetings must meet the following criteria.

1. The meeting is to be voluntary and student initiated;
2. There is no sponsorship of the meeting by the school, the government, or its agents or employees;
3. The meeting must occur during non-instructional time;
4. Employees or agents of the school are present at religious meetings only in a non-participatory capacity;
5. The meeting does not materially and substantially interfere with the orderly conduct of educational activities within the school; and
6. Nonschool persons may not direct, conduct, control, or regularly attend activities of student groups.

All meetings held on school premises must be scheduled and approved by the principal. The school, its agents, and employees retain the authority to maintain order and discipline, to protect the well being of students and faculty, and to assure that attendance of students at meetings is voluntary.

Fraternities, sororities, and secret societies are forbidden in the District's schools.

Membership to student organizations shall not be by a vote of the organization's members, nor be restricted by the student's race, religion, sex, national origin, or other arbitrary criteria. Hazing, as defined by law, is forbidden in connection with initiation into, or affiliation with, any student organization **including extracurricular activities and sports programs**.

Legal References:      A.C.A. § 6-5-201 et seq  
                                  A.C.A. § 6-21-204  
                                  20 U.S.C. 4071 Equal Access Act  
                                  Board of Education of the Westside Community Schools v. Mergens, 496 U.S. 226 (1990)  
                                  A.C.A. § 6-18-601 et seq.  
                                  Act 1160 of 2011

Date Adopted: 8-28-03

Last Revised: 6-24-10

Last Revised: 9-22-11



## **5.15—CONTACT WITH STUDENTS WHILE AT SCHOOL**

~~Parents wishing to visit their children during the school day shall register first with the office. If there is any question concerning the legal custody of the student, the parent shall present documentation to the principal or his/her designee establishing the parent's custody of the student or legal right of visitation. It shall be the responsibility of the custodial parent to make any visitation restrictions regarding the non custodial parent known to the principal by presenting a copy of a file-marked court order. Estranged parents may visit their child during school hours with the consent of the custodial parent.~~

~~Questioning of students by non-school personnel shall be granted only with a court order directing such questioning, with permission of the parents of a student (or the student if above eighteen [18] years of age), or in response to a subpoena or arrest warrant. If the District makes a report to any law enforcement agency concerning student misconduct or if access to a student is granted to a law enforcement agency due to a court order, the principal or the principal's designee shall make a good faith effort to contact the student's parent, legal guardian, or other person having lawful control by court order, or person acting in loco parentis on student enrollment forms.~~

~~Principals must release a student to either a police officer who presents a subpoena for the student, or a warrant for arrest, or to an agent of the social services with a court order signed by a judge. Upon release of the student, the principal or designee shall give the student's parent, legal guardian, or other person having lawful control by court order, or person acting in loco parentis notice that the student has been taken into custody by law enforcement personnel or a social services agency. If the principal or designee is unable to reach the parent, he or she shall make a reasonable, good faith effort to get a message to the parent to call the principal or designee, and leave both a day and an after hours telephone number.~~

## **5.15—CONTACT WITH STUDENTS WHILE AT SCHOOL**

### **CONTACT BY PARENTS**

Parents wishing to speak to their children during the school day shall register first with the office.

### **CONTACT BY NON-CUSTODIAL PARENTS**

If there is any question concerning the legal custody of the student, the custodial parent shall present documentation to the principal or his/her designee establishing the parent's custody of the student. It shall be the responsibility of the custodial parent to make any court ordered "no contact" or other restrictions regarding the non-custodial parent known to the principals by presenting a copy of a file-marked court order. Without such a court order on file, the school will release the child to either of his/her parents. Non-custodial parents who file with their principal a date-stamped copy of current court orders granting visitation may eat lunch, volunteer in their child's classroom, or otherwise have contact with their child during school hours and the prior approval of the school's principal. Such contact is subject to the limitations outlined in Policy 5.16 (Admitting Visitors to School Buildings), Policy 6.5, (Visitors to Schools) and any other policies that may apply.

Unless prior arrangements have been made with the school's principal, Arkansas law provides that the transfer of a child between his/her custodial parent and non-custodial parent, when both parents are present, shall not take place on the school's property on normal school days during normal hours of school operation.

### **CONTACT BY LAW ENFORCEMENT, SOCIAL SERVICES, OR BY COURT ORDER**

State Law requires that the Department of Human Services employees, local law enforcement, or agents of the Crimes Against Children Division of the Department of Arkansas State Police, may interview students without a court order for the purpose of investigating suspected child abuse. Instances where the interviewers deem it necessary, they may exercise a "72-hour hold" without first obtaining a court order. Other questioning of students by non-school personnel shall be granted only with a court order directing such questioning, with permission of the parents of a student (or the student if above eighteen (18) years of age) or in response to a subpoena or arrest warrant.



If the District makes a report to any law enforcement agency concerning student misconduct or if access to a student is granted to a law enforcement agency due to a court order, the principal or the principal's designee shall make a good faith effort to contact the student's parent, legal guardian, or other person having lawful control by court order, or person acting in loco parentis identified on student enrollment forms. The principal or the principal's designee shall not attempt to make such contact if presented documentation by the investigator that notification is prohibited because a parent, guardian, custodian, or person standing in loco parentis is named as an alleged offender of the suspected child maltreatment. This exception applies only to interview requests made by a law enforcement officer, and investigator of the Crimes Against Children Division of the Department of Arkansas State Police, or an investigator or employee of the Department of Human Services.

In instances other than those related to cases of suspected child abuse, principals must release a student to either a police officer who presents a subpoena for the student, or a warrant for arrest, or to an agent of state social services or an agent of a court with jurisdiction over a child with a court order signed by a judge. Upon release of the student, the principal or designee shall give the student's parent, legal guardian, or other person having lawful control by court order, or person acting in loco parentis notice that the student has been taken into custody by law enforcement personnel or a state's social services agency. If the principal or designee is unable to reach the parent, he or she shall make a reasonable, good faith effort to get a message to the parent to call the principal or designee, and leave both a day and an after-hours telephone number.

Legal Reference: A.C.A. § 6-18-513

~~A.C.A. § 12-12-509, 510, and 516~~

A.C.A. § 9-13-104

~~A.C.A. § 12-18-609, 610, 613~~

~~A.C.A. § 12-18-1001, 1005~~

Date Adopted: 8-28-03

Revised: 9-22-11



## 5.2—ENTRANCE REQUIREMENTS

To enroll in a school in the District, the child must be a resident of the District as defined in District policy 5.1—RESIDENCE REQUIREMENTS or meet the criteria outlined in policy 5.40—HOMELESS STUDENTS or in policy 5.52-STUDENTS WHO ARE FOSTER CHILDREN, be accepted as a transfer student under the provisions of policy 5.4-STUDENT TRANSFER, or participate under a school choice option and submit the required paperwork as required by the choice option.

Students may enter kindergarten if they will attain the age of five (5) on or before August 1 of the year in which they are seeking initial enrollment. Any student who has been enrolled in a state-accredited or state-approved kindergarten program in another state for at least sixty (60) days, who will become five (5) years old during the year in which he/she is enrolled in kindergarten, and who meets the basic residency requirement for school attendance may be enrolled in kindergarten upon written request to the District.

Any child who will be six (6) years of age on or before October 1 of the school year of enrollment and who has not completed a state-accredited kindergarten program shall be evaluated by the district and may be placed in the first grade if the results of the evaluation justify placement in the first grade and the child's parent or legal guardian agrees with placement in the first grade; otherwise the child shall be placed in kindergarten.

Any child may enter first grade in a District school if the child will attain the age of six (6) years during the school year in which the child is seeking enrollment and the child has successfully completed a kindergarten program in a public school in Arkansas.

Any child who has been enrolled in the first grade in a state-accredited or state-approved elementary school in another state for a period of at least sixty (60) days, who will become age six (6) years during the school year in which he/she is enrolled in grade one (1), and who meets the basic residency requirements for school attendance may be enrolled in the first grade.

Students who move into the District from an accredited school shall be assigned to the same grade as they were attending in their previous school (mid-year transfers) or as they would have been assigned in their previous school. Home-schooled students shall be evaluated by the District to determine their appropriate grade placement.

Prior to the child's admission to a District school:

1. The parent, guardian, or other responsible person shall furnish the child's social security number, or if they request, the district will assign the child a nine (9) digit number designated by the department of education.
2. The parent, guardian, or other responsible person shall provide the district with one (1) of the following documents indicating the child's age:
  - a. A birth certificate;
  - b. A statement by the local registrar or a county recorder certifying the child's date of birth;
  - c. An attested baptismal certificate;
  - d. A passport;
  - e. An affidavit of the date and place of birth by the child's parent or guardian;
  - f. Previous school records; or
  - g. Military Identification
3. The parent, guardian, or other responsible person shall indicate on school registration forms whether the child has been expelled from school in any other school district or is a party to an expulsion proceeding.



4. The child shall be age appropriately immunized from poliomyelitis, diphtheria, tetanus, pertussis, red (rubeola) measles, rubella, mumps, hepatitis B, varicella and other diseases as designated by the State Board of Health, or have an exemption issued by the Arkansas State Department of Health. Proof of immunization shall be by a certificate of a licensed physician or a public health department acknowledging the immunization.

Legal References: A.C.A. § 6-18-201 (c)

A.C.A. § 6-18-207

A.C.A. § 6-18-208

A.C.A. § 6-18-702

A.C.A. § 6-15-504 (f)

A.C.A. § 6-27-102,105

**A.C.A. § 9-28-113**

Plyler v Doe 457 US 202,221 (1982)

Date Adopted: 8-28-03

Revised: 5-26-05

Revised: 6-24-10

Revised: 9-22-11



## **5.3—COMPULSORY ATTENDANCE REQUIREMENTS**

Every parent, guardian, or other person having custody or charge of any child age five (5) through seventeen (17) years on or before August 1<sup>5</sup> of that year who resides, as defined by policy 5.1-RESIDENCE REQUIREMENTS, within the District shall enroll and send the child to a District school with the following exceptions.

The child is enrolled in private or parochial school.

The child is being home-schooled and the conditions of policy 5.6-HOME SCHOOLING have been met.

The child will not be age six (6) on or before August 1<sup>5</sup> of that particular school year and the parent, guardian, or other person having custody or charge of the child elects not to have him/her attend kindergarten. A kindergarten waiver form prescribed by regulation of the Department of Education must be signed and on file with the District administrative office.

The child has received a high school diploma or its equivalent as determined by the State Board of Education.

The child is age sixteen (16) or above and is enrolled in a post-secondary vocational-technical institution, a community college, or a two-year or four-year institution of higher education.

The child is age sixteen (16) or seventeen (17) and has met the requirements to enroll in an adult education program as defined by A.C.A. § 6-18-201 (b).

Legal Reference: A.C.A. § 6-18-201  
A.C.A. § 6-18-207

Date Adopted: 8-28-03

Revised: 6-24-10

Revised: 9-22-11



## 5.32—SEARCH, SEIZURE, AND INTERROGATIONS

The District respects the rights of its students against arbitrary intrusion of their person and property. At the same time, it is the responsibility of school officials to protect the health, safety, and welfare of all students enrolled in the District in order to promote an environment conducive to student learning. The Superintendent, principals, and their designees have the right to inspect and search school property and equipment. They may also search students and their personal property in which the student has a reasonable expectation of privacy, when there is reasonable suspicion to believe such student or property contains illegal items or other items in violation of Board policy or dangerous to the school community. School authorities may seize evidence found in the search and disciplinary action may be taken. Evidence found which appears to be in violation of the law shall be reported to the appropriate authority.

School property shall include, but not be limited to, lockers, desks, and parking lots, as well as personal effects left there by students. When possible, prior notice will be given and the student will be allowed to be present along with an adult witness, however, searches may be done at any time with or without notice or the student's consent. A personal search must not be excessively intrusive in light of the age and sex of the student and the nature of the infraction.

The Superintendent, principals, and their designees may request the assistance of law enforcement officials to help conduct searches. Such searches may include the use of specially trained dogs.

A school official of the same sex shall conduct personal searches with an adult witness of the same sex present.

State Law requires that Department of Human Services employees, local law enforcement, or agents of the Crimes Against Children Division of the Department of Arkansas State Police, may interview students without a court order for the purpose of investigating suspected child abuse. In instances where the interviewers deem it necessary, they may exercise a "72-hour hold" without first obtaining a court order. Questioning of students by non-school personnel shall be granted only with a court order directing such questioning, with permission of the parents of a student (or the student if above eighteen [18] years of age), or in response to a subpoena or arrest warrant.

If the District makes a report to any law enforcement agency concerning student misconduct or if access to a student is granted to a law enforcement agency due to a court order, the principal or the principal's designee shall make a good faith effort to contact the student's parent, legal guardian, or other person having lawful control by court order, or person acting in loco parentis on student enrollment forms. The principal or the principal's designee shall not attempt to make such contact if presented documentation by the investigator that notification is prohibited because a parent, guardian, custodian, or person in loco parentis is named as an alleged offender of the suspected child maltreatment. This exception applies only to interview requests made by a law enforcement officer, an investigator of the Crimes Against Children Division of the Department of Arkansas State Police, or an investigator or employee of the Department of Human Services.

In instances other than those related to cases of suspected child abuse, principals must release a student to either a police officer who presents a subpoena for the student, or a warrant for arrest, or to an agent of state social services or an agent of a court with jurisdiction over a child with a court order signed by a judge. Upon release of the student, the principal or designee shall give the student's parent, legal guardian, or other person having lawful control by court order, or person acting in loco parentis notice that the student has been taken into custody by law enforcement personnel or a state's social services agency. If the principal or designee is unable to reach the parent, he or she shall make a reasonable, good effort to get a message to the parent to call the principal or designee, and leave both a day and an after-hours telephone number.

Legal Reference: A.C.A. § 6-18-513

A.C.A. § 9-13-104

A.C.A. §12-18-609, 610, 613



A.C.A. §12-18-1001, 1005

Date Adopted: Effective Date: 8/28/03

Revised: 9/22/11



#### 5.4—STUDENT TRANSFERS

The Fayetteville District shall review and accept or reject requests for transfers, both into and out of the district, on a case by case basis.

Any student transferring from a school accredited by the Department of Education to a school in this district shall be placed into the same grade the student would have been in had the student remained at the former school.

Any student transferring from home school or a school that is not accredited by the Department of Education to a District school shall be evaluated by District staff to determine the student's appropriate grade placement.

The Board of Education reserves the right, after a hearing before the Board, not to allow any person who has been expelled from another district to enroll as a student until the time of the person's expulsion has expired.

**Except as otherwise required or permitted by law**, the responsibility for transportation of any nonresident student admitted to a school in this District shall be done by the student or the student's parents. The District and the resident district may enter into a written agreement with the student or student's parents to provide transportation to or from the District, or both.

Legal References: A.C.A. § 6-18-316

A.C.A. § 6-18-510

A.C.A. § 6-15-504 (f)

**A.C.A. § 9-28-113(b)(4)**

State Board of Education Standards of Accreditation VII (E) (1)

Date Adopted: 8-28-03

Revised: 9-22-11



## 5.5—ATTENDANCE REQUIREMENTS FOR STUDENTS IN GRADES 9 - 12

Students in grades nine through twelve (9-12) are required to schedule and attend at least 350-360 minutes of regularly scheduled class time daily. Part of this requirement may be met by students taking post-secondary courses. Eligible students' enrollment and attendance at a post-secondary institution shall count toward the required time of school attendance.

### Study Halls

Students may be assigned to no more than one (1) class period each day for a study hall that the student shall be required to attend and participate in for the full period. Such study halls are to be used for the purposes of self-study or for organized tutoring which is to take place in the school building.

### Extracurricular Classes

Students may be assigned to no more than one (1) class period each day for organized and scheduled student extracurricular classes that the student shall be required to attend and participate in for the full class period. Extracurricular classes related to a seasonal activity shall meet for an entire semester whether or not the season ends prior to the end of the semester. Students must attend and participate in the class for the entire semester in order to receive credit for the course. For the purpose of this policy, extracurricular classes is defined as school sponsored activities which are not an Arkansas Department of Education approved course counting toward graduation requirements or classes that have not been approved by the Arkansas Department of Education for academic credit. Such classes may include special interest, fine arts, technical, scholastic, intramural, and interscholastic opportunities.

### Course Enrollment Outside of District

Enrollment and attendance in vocational-educational training courses, college courses, school work programs, and other department-sanctioned educational programs may be used to satisfy the student attendance requirement even if the programs are not located at the public schools. Attendance in such alternative programs must be pre-approved by the school's administration. The district shall strive to assign students who have been dropped from a course of study or removed from a school work program job during the semester into another placement or course of study. In the instances where a subsequent placement is unable to be made, the district may grant a waiver for the student for the duration of the semester in which the placement is unable to be made.

In rare instances, students may be granted waivers from the mandatory attendance requirement if they would experience proven financial hardships if required to attend a full day of school. For the purpose of this policy, proven financial hardships is defined as harm or suffering caused by a student's inability to obtain or provide basic life necessities of food, clothing, and shelter for the student or the student's family. The superintendent shall have the authority to grant such a waiver, on a case-by-case basis, only when convinced the student meets the definition of proven financial hardships.

In any instance where a provision of a student's Individual Education Plan (IEP) conflicts with a portion(s) of this policy, the IEP shall prevail.

Legal References:      A.C.A. § 6-18-210, 211  
Arkansas Department of Education Rules Governing the Mandatory Attendance Requirements for  
Students in Grades Nine through Twelve

Date Adopted:11-18-04

Revised: 9-22-11



## 5.55—GRADING

The Fayetteville School Board recognizes that a system for reporting pupil progress is a vital part of communication between the home and the school. An adequate progress reporting plan should assist students in recognizing their own potential and self worth, provide parents with information about their children's growth and the school's total program, provide an accurate permanent record of student achievement and growth, and stimulate the school to engage in productive curriculum planning and execution.

Grades assigned to a student (letter-grades, percentages, symbols, etc.) shall reflect only the extent to which the student has achieved the expressed educational objectives of the course, grade-level, etc., as prescribed by Section V-B of the "Standards for Accreditation of Arkansas Public Schools" (1984).

Nothing in this policy is intended to prohibit or discourage a teacher from assigning and reporting a separate grade for a student's behavior, attendance, attitude, etc. However, such grades shall not become a part of the student's permanent record and shall not be used as a part of the record of student achievement, except as indicated above.

A public school student who has successfully completed the eighth grade shall be eligible to enroll in a publicly supported community college, four-year college or university for elective credit. With prior approval from the administration, high school students are allowed to enroll in college courses for replacement credit, credit recovery, or grade improvement, and shall be entitled to receive appropriate academic credit in both the institution of higher education and the public school in which they are enrolled.

The following grade descriptors, letter grade, and percentage scale relationships will be applied in:

Kindergarten:

- ✓ = Meeting Grade-Level Expectation
- = Below Grade-Level Expectation
- = Not Yet Assessed

Grade 1: + = Student Demonstrates Skill

- = Below Grade-Level Expectation
- = Not Yet Assessed

Grade 2:

- E = Excellent
- V = Very Good
- S = Satisfactory
- N = Needs to Improve
- U = Unsatisfactory

Grades 3-6:

100%-90%	A	Excellent
89%-80%	B	Good
79%-70%	C	Marginally satisfactory
69%-60%	D	Unsatisfactory
59%-	F	Failing

Grades 7-12:

<u>Percent</u>	<u>Letter Grade</u>	<u>Descriptor</u>	<u>Quality Points</u>
			Regular, Honors & College Placement
100%-90%	A	Excellent	4
89%-80%	B	Good	3
79%-70%	C	Marginally Satisfactory	2
69%-60%	D	Unsatisfactory	1
59%-	F	Failing	0



## Advanced Placement and International Baccalaureate Grading

Although Fayetteville School District is not a member of the International Baccalaureate (IB) Program, students transferring into the District from another Advanced Placement (AP) or IB program will be awarded credit as outlined by the Arkansas Department of Education.

Weighted Credit for designated AP and IB courses will be contingent upon the AP/IB teacher obtaining applicable training; the student taking the entire AP/IB course offered in a particular subject; the student completing the applicable test offered by the College Board for AP at the end of the AP course or the applicable test offered by IB at the time prescribed by IB. **For students who transfer into FPS and who have credit for ADE Approved Honors Courses in their previous school as reflected on the incoming transcript, these students will receive the additional quality points (same as for AP and IB) for GPA purposes. Weighted credit will not be awarded to any transfer courses beyond AP/IB.**

		<u>Quality Points</u>
		Advanced Placement/
		International Baccalaureate

100%-90%	A	Excellent	5
89%-80%	B	Good	4
79%-70%	C	M marginally Satisfactory	3
69%-60%	D	Unsatisfactory	2
59%-	F	Failing	0

Adopted: 6-19-89      Amended: 8-6-91      Amended: 6-29-93  
Amended: 10-28-04      Amended: 2-24-05      Amended: 2-28-08  
Amended: 9-22-11



## 5.64-GRADUATION REQUIREMENTS

### **GRADUATION REQUIREMENTS FOR 2016 AND BEYOND**

Any student enrolled in Fayetteville School District may receive a diploma after completing the following requirements:

CORE DIPLOMA	SMART CORE DIPLOMA
<b>English</b> – 4 credits	<b>English</b> – 4 credits
<b>Math</b> – 4 credits Algebra I or its equivalent, Geometry or its equivalent, other math credits must build on the base of algebra and geometry knowledge & skills	<b>Math</b> – 4 credits Algebra I or Algebra A/B (Grades 7-8 or 8-9) Geometry or Investigating Geometry or Geometry AB (Grades 8-9 or 9-10), Algebra II, 4 <sup>th</sup> math beyond Algebra II
<b>Science</b> – 3 credits 1 credit of Biology, 1 credit chosen from a physical science, 1 credit of elective science	<b>Science</b> – 3 credits 1 credit of Biology, 2 credits chosen from Physical Science, Chemistry or Physics
<b>Social Studies</b> – 3 credits American History, World History and ½ credit of Civics/½ credit of Economics	<b>Social Studies</b> – 3 credits 1 credit of American History, 1 credit of World History and ½ credit of Civics/½ credit of Economics
<b>Physical Education</b> - ½ credit of PE	<b>Physical Education</b> – ½ credit of PE
<b>Health</b> – ½ credit	<b>Health</b> – ½ credit
<b>Fine Arts</b> – ½ credit (art, music, fine arts drama)	<b>Fine Arts</b> – ½ credit (art, music, fine arts drama)
<b>Oral Communications</b> – ½ credit	<b>Oral Communications</b> – ½ credit
<b>Career Focus Area</b> – 6 credits	<b>Career Focus Area</b> – 6 credits
<b>Total</b> – 22 Credits	<b>Total</b> – 22 Credits

### **FPS Additional Requirements for Graduation**

CAREER FOCUS ELECTIVE – 2 Credits	CAREER FOCUS ELECTIVE – 2 Credits
<b>Total</b> – 24 Credits	<b>Total</b> – 24 Credits

\*A two-year algebra equivalent or a two-year geometry equivalent may each be counted as two credits of the four (4) credit requirement under **Core Diploma requirements**.

\*All students under Smart Core must take a math course in grade 11 or 12 and complete Alg. II.

FAYETTEVILLE HONORS GRADUATE *SEE BELOW	
<b>English</b> – 4 credits	
<b>Math</b> – 4 credits – Algebra I, Geometry, Algebra II, 4 <sup>th</sup> math beyond Algebra II	



*The fine art of education.*

**Science** – 3 credits, 1 credit of Biology, 2 credits from Physical Science, Chemistry or Physics

**Social Studies** – 3 credits – 1 credit of American History, 1 credit of World History and  $\frac{1}{2}$  credit of Civics/  $\frac{1}{2}$  credit of Economics

**Physical Education** –  $\frac{1}{2}$  credit PE

**Health** –  $\frac{1}{2}$  credit

**Fine Arts** –  $\frac{1}{2}$  credit (art, music, fine arts drama)

**Oral Communications** –  $\frac{1}{2}$  credit

**Career Focus Area** – 8 credits (2 credits must be in same foreign language)

**Total** – 24 Credits

\***Honors Graduate** - students must maintain a 3.5 GPA and meet the Honors Graduate Diploma requirements, with 10 credits completed from the qualifying courses listed below.

\***High Honors Graduate** - students must maintain a 3.75 GPA, meet the Honors Graduate Diploma requirements, with 10 credits completed from the qualifying courses listed below.

\***Distinguished** - 12 credits completed from the qualifying courses listed below.

#### **Qualifying Courses for High/Distinguished Honors Graduates**

Math	English	Science	History	Other
<b>Honors Graduate</b> - students must maintain a 4.0 GPA, meet the Honors Graduate Diploma requirements, with Honors Algebra I	Pre-AP English (9)	Pre-AP Physical Science (9)	AP World History	Spanish III, IV, Honors Spanish
Honors Algebra II	Pre-AP English (10)	Pre-AP Biology	AP Comparative Politics	AP Spanish Language
Honors Geometry	AP English Language/Composition	AP Biology	AP European History	French III, French IV, AP French Language
AP Calculus AB	AP English Literature	AP Physics B	AP Macroeconomics AP Microeconomics	German III, AP German Language
AP Calculus BC	English Composition I	AP Physics C	AP Psychology	AP Studio Art
AP Statistics	English Composition II	AP Environmental Sci.	AP U.S. Government	AP Music Theory, A Cappella
PreCal/Trig Honors		Honors Chemistry	AP U.S. History	
College Algebra, Finite Math		AP Chemistry	AP Human Geography	

Revised 1/24/08 Revised 8/25/11 Revised: 9-22-11



September 22, 2011

## Nabholz Contract for Capital Projects

TO: Board of Education

FROM: Vicki Thomas

I will ask the Board to approve the contract with Nabholz Construction for capital projects.



# AIA® Document A133™ – 2009

## **Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price**

AGREEMENT made as of the 15th day of September in the year 2011  
(In words, indicate day, month and year.)

BETWEEN the Owner:  
(Name, legal status and address)

Fayetteville Public Schools  
1000 West Stone  
Fayetteville, AR. 72701

and the Construction Manager:  
(Name, legal status and address)

Nabholz Construction Corporation  
PO Box 277  
3301 North Second Street (72756)  
Rogers, AR. 72757

for the following Project:  
(Name and address or location)

Fayetteville Public School District Athletic Facilities Additions & Renovations

The Architect:  
(Name, legal status and address)

Crafton Tull Sparks  
901 North 47<sup>th</sup> Street, Suite 200  
Rogers, AR. 72756

The Owner's Designated Representative:  
(Name, address and other information)

Vicki Thomas, Superintendent of Schools  
Fayetteville Public Schools  
1000 West Stone  
Fayetteville, AR. 72701

The Construction Manager's Designated Representative:  
(Name, address and other information)

Phillip Jones, Project Executive  
Nabholz Construction Corporation  
PO Box 277  
3301 North Second Street (72756)  
Rogers, AR. 72757

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

The Architect's Designated Representative:  
(Name, address and other information)

David Swearingen, Senior Vice President  
Crafton Tull Sparks  
901 North 47<sup>th</sup> Street, Suite 200  
Rogers, AR. 72756

The Owner and Construction Manager agree as follows.

Init.

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### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

**§ 1.1.1** Contractor shall exercise the degree of care, skill and diligence in the performance of the Contractor's Work, to assure its Work is performed in a good and workmanlike manner, consistent with construction industry standards for similar projects and circumstances in the same geographic area (hereinafter the "Contractor's Standard of Care"). The Contractor shall be responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Contractor's Work under this Agreement, including all coordination of the duties of all trades, and shall furnish efficient business administration and supervision of the Work.

Contractor's Standard of Care specifically excludes any design or design-related responsibilities, and any action taken by Contractor under this Agreement does not and shall not be construed to approve, represent or warrant the adequacy and suitability of the plans and specifications for the purpose for which they are provided.

**§ 1.1.2** To the extent the Owner requests that the Contractor provide services within standard of care, such as value analysis and/or constructability suggestions or comments with respect to the drawings and specifications, owner acknowledges that such services are advisory only and not professional design services. The owner shall refer all suggestions and comments to the Architect or other design professionals for review and evaluation prior to owner's acceptance thereof. The owner further acknowledges that the Contractor is not responsible for adequacy of the drawings and specifications or for confirming the absence of errors or omissions that may exist therein. The owner

shall cause the Architect to revise the drawings and specifications to reflect all value analysis and constructability suggestions and comments accepted by the owner without delay or disruption to the timely and orderly progress of the work. The contract sum and contract time maybe adjusted upon the contractors review and pricing of the revised drawings and specifications.

### **§ 1.2 Relationship of the Parties**

The Construction Manager (referred to herein as Construction Manager, General Contractor or Contractor) accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

### **§ 1.3 General Conditions**

For the Preconstruction Phase, AIA Document A201™-2007 (as amended), General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007 (as amended), which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 (as amended) shall mean the Construction Manager.

## **ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### **§ 2.1 Preconstruction Phase**

**§ 2.1.1** The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

#### **§ 2.1.2 Consultation**

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, and possible cost reductions.

**§ 2.1.3** When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, and the occupancy requirements of the Owner.

#### **§ 2.1.4 Phased Construction**

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

### **§ 2.1.5 Preliminary Cost Estimates**

**§ 2.1.5.1** Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggest alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

**§ 2.1.5.2** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner and Construction Manager, estimates of the Cost of the Work of increasing detail and refinement until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

### **§ 2.1.6 Subcontractors and Suppliers**

The Construction Manager shall develop bidders' interest in the Project.

### **§ 2.1.7 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

### **§ 2.1.8 Notices and Compliance with Laws**

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

*(Paragraphs deleted)*

### **§ 2.2 Guaranteed Maximum Price Proposal and Contract Time**

**§ 2.2.1** When the Drawings and Specifications have been completed, the construction manager will solicit trade contractors for competitive bids in all of the relevant trade categories. Upon completion of the bidding cycle, the construction manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated cost of work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

**§ 2.2.2** The Owner and Contractor acknowledge that the Contractor has developed the Guaranteed Maximum Price basis upon preliminary drawings and specification. In that such drawings and specifications do not contain all details and requirements of the Work, the Guaranteed Maximum Price is based on certain assumptions by the Contractor. To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor will include an allowance to be identified in Amendment # 1 for such further development consistent with the Contract documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required shall be incorporated by Change Order. If the final drawings and specifications require performance of the Work in any manner different from such assumptions, or contain changes in the scope of the Work to be performed by the Contractor, the Contractor shall as soon as practicable notify the Owner thereof and of the Contractor's estimate of the resulting increase or decrease in the Guaranteed Maximum Price. At such time as the Owner and the Contractor have agreed upon the effect of such difference and/or changes in the scope of the Work, a Change Order shall be issued substituting the final Drawings and Specifications for those described in this Agreement and the Guaranteed Maximum Price and Contract Time shall be adjusted as agreed by the parties.

**§ 2.2.3** The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.
- .6 The date of commencement of the Work shall be within ten (10) days of receipt of Owner's Notice to Proceed or the issuance of all applicable permits, whichever is later.

*(Paragraph deleted)*

§ 2.2.3 The GMP shall contain a separately identified contingency (the "Construction Contingency"). The construction contingency is not allocated to any particular item of the cost of the Work and is established solely for the Contractor's use for cost of the Work incurred by the Contractor, including unanticipated field conditions requiring intervention (but not unanticipated soils conditions which will constitute a change condition), mitigation of normal weather impact, losses, expenses or damages not covered by insurance or bonds, low estimates or deviations from the estimated contractors cost and overly aggressive scheduling or shortage of properly skilled workforce. It is understood that it is not intended for this contingency to be allocated to costs due to errors and omissions in the contract documents. It is understood that the amount of the Construction Contingency, except as otherwise provided in this agreement, is the maximum sum available to the Contractor to cover costs incurred as a part of the GMP and that cost overruns in excess of the amount of the Construction Contingency will be borne by the Contractor.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, with the exception of reimbursable costs associated with Preconstruction Services, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications, provided the Architect "clouds" or otherwise identifies graphically any changes in the Drawings and Specifications in which the Guaranteed Maximum Price was based upon.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, at the time the Guaranteed Maximum Price Amendment is executed.

## § 2.3 Construction Phase

### § 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007 (as amended), the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

### § 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. However, if the Guaranteed Maximum Price has been established the Owner may not prohibit the Construction Manager from obtaining bids from other bidders. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007 (as amended).

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes.

## § 2.4 Professional Services

Section 3.12.10 of A201–2007 (as amended) shall apply to both the Preconstruction and Construction Phases.

## § 2.5 Hazardous Materials

Section 10.3 of A201-2007 (as amended) shall apply to both the Preconstruction and Construction Phases.

## ARTICLE 3 OWNER'S RESPONSIBILITIES

### § 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including invert and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

### § 3.2 Owner's Designated Representative

The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007 (as amended), the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 3.2.1 Legal Requirements.** The Owner shall furnish all of its own legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

### § 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103™-2007, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

### § 4.1 Compensation

**§ 4.1.1** For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

The fee for preconstruction services noted above, for one primary design option (but not for numerous design options) shall be charged at the hourly rates listed below in Article 4.1.2, as the services are delivered, however a Guaranteed Maximum Price (GMP) of Sixteen Thousand Dollars (\$16,000) is established for these services with any savings being returned to the Owner. Any misc. costs associated with the delivery of Preconstruction Services (printing, advertising, travel, etc.) shall be invoiced at direct cost of the item without mark-up or profit for the Construction Manager, which are included in the Guaranteed Maximum Price for the Preconstruction Services stated above. Preconstruction Services will be invoiced on a pro-rata monthly basis for the term of the preconstruction services as identified in article 4.1.2.

**§ 4.1.2** Compensation for Preconstruction Phase Services shall be equitably adjusted if such services extend beyond 120 days from the date of this Agreement or if the originally contemplated scope of services is significantly modified. If Preconstruction Services extend past the time frame identified, the following rates shall apply and will be billed on a timecard basis for those individuals working on this project:

Project Executive	\$138.00/hr
Preconstruction Manager	\$103.00/hr
Senior Project Manager	\$155.00/hr
Constructability/Value Analysis Professional	\$100.00/hr
Project Manager	\$145.00/hr
General Superintendent	\$109.00/hr
Senior Superintendent	\$145.00/hr
Superintendent	\$122.00/hr
Project Foremen	\$75.00/hr
Project Coordinator	\$75.00/hr
Clerical	\$35.00/hr
Model Integrator (BIM)	\$100.00/hr
Safety Director	\$86.00/hr

*(Paragraph deleted)*

Should the Date of Commencement, as defined in the initial solicitation, be delayed through no fault of the Construction Manager, the Construction Manager reserves the right to substitute project team members from those originally proposed or be entitled to compensation for those team members per the rate schedule list above.

**§ 4.1.3** Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

*(Paragraph deleted)*

**§ 4.2 Payments**

**§ 4.2.1** Unless otherwise agreed, payments for services will be in accordance with 4.1.1.

**§ 4.2.2** Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

*(Insert rate of monthly or annual interest agreed upon.)*

Highest allowed by Arkansas law

## ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

**§ 5.1** For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

**§ 5.1.1** The Construction Manager's Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)*

A lump sum equal to four point nine five percent (4.95)% of the Cost of the Work. The Construction manager's fee shall be adjusted for changes in the work by zero percent (0%) for deductive change orders and ten (10)% for additive changes.

**§ 5.1.2** Rental rates for Construction Manager-owned equipment shall not exceed Eighty-five percent (85%) of the standard rate paid at the place of the Project.

**§ 5.1.3** Unit prices, if any:

*(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)*

Item General Conditions/General Requirements	Units and Limitations Per calendar day	Price per Unit (\$0.00) TBD upon establishment of GMP and documented in Amendment
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*(Table deleted)*

*(Paragraphs deleted)*

**§ 5.2 Guaranteed Maximum Price**

**§ 5.2.1** The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

*(Insert specific provisions if the Construction Manager is to participate in any savings.)*

**§ 5.2.1.2** Owner Acknowledges that the Guaranteed Maximum Price applies in the aggregate to all categories and line items of the cost of Work as defined in Article 6 of this Agreement and in no event shall be considered a line item guarantee of the cost of any individual portion of the Work.

**§ 5.2.2** The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

### § 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007 (as amended), General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007 (as amended), General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007 (as amended) and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 (as amended) shall have the meanings assigned to them in AIA Document A201-2007 (as amended) and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007 (as amended) shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

### § 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Salaries and burden of the Construction Manager's supervisory, project management, executive, safety and administrative personnel, when engaged in execution of the work these persons costs will be considered a cost of the Work, included in the Guaranteed Maximum Price (GMP) at the personnel rates outlined in Article 4.1.2 herein.

#### Classification

#### Name

*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the site office shall be included in the Cost of the Work, such personnel shall be identified below.)*

**§ 6.2.3** Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, "referred to as Labor Burden shall be charged at a flat rate of 49% of base wage,", provided that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.2.1 through 6.1.2.3 as well as the Guaranteed Maximum Price (GMP)..

**§ 6.2.4** The Contract Sum is based upon the Project not being subject to State and Federal Prevailing Wage Law. In the event that this Project becomes subject to State or Federal Prevailing Wage Law the Contract Sum will be adjusted accordingly.

**§ 6.2.5** Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

### **§ 6.3 Subcontract Costs**

Payments made or costs incurred by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

### **§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ 6.4.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

**§ 6.4.2** Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### **§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 6.5.1** Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

**§ 6.5.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Equipment owned by the Construction manager shall be rented at 85% of AED listed pricing according to which the state the project is located.

**§ 6.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ 6.5.4** Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

**§ 6.5.5** That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

**§ 6.5.6** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

### **§ 6.6 Miscellaneous Costs**

**§ 6.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents and the Construction Manager that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

**§ 6.6.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

**§ 6.6.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

**§ 6.6.4** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 (as amended) or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

**§ 6.6.5** Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 (as amended) or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

**§ 6.6.6** Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

**§ 6.6.7** Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

**§ 6.6.8** Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld; however, any such expense shall not be included in the sum upon which the Construction Manager's fee is calculated.

**§ 6.6.9** Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

## **§ 6.7 Other Costs and Emergencies**

**§ 6.7.1** Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

**§ 6.7.2** Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007 (as amended).

**§ 6.7.3** Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

**§ 6.7.4** The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 (as amended) or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

## **§ 6.8 Costs Not To Be Reimbursed**

**§ 6.8.1** The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;

- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

*(Paragraphs deleted)*

#### **§ 6.10 Related Party Transactions**

**§ 6.10.1** For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

**§ 6.10.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

#### **§ 6.11 Accounting Records**

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

### **ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

#### **§ 7.1 Progress Payments**

**§ 7.1.1** Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

**§ 7.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

**§ 7.1.3** Provided an application for Payment is received by the Architect not later than the 1<sup>st</sup> day of the month, the Owner shall make payment to the Construction Manager not later than the 30<sup>th</sup> day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the owner not later than 30 days after the Architect received the application for payment. Owner and Construction Manager agree to the terms outlined in 4.2.2 shall apply to this article 7.1.3. An Application for Payment shall be

deemed certified 14 days after submittal unless the Owner or Architect objects to all or part of the Application for Payment within 14 days of submittal.

**§ 7.1.4** With each Application for Payment, the Contractor shall submit a detailed cost transaction report generated from the Contractor's accounting system, and upon request by the Owner or Architect, shall provide any other evidence reasonably required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's fee; plus (3) payrolls for the period covered by the present Application for Payment.

**§ 7.1.5** Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

**§ 7.1.6** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

**§ 7.1.7** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007 (as amended);
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of zero percent ( -0-% ). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent ( 5% ) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007 (as amended).

**§ 7.1.8** Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than Five Percent ( 5% ). The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors. If the manner of completion of the work, and its progress are and remain satisfactory for the Owner, and the work is shown fifty percent (50%) or more complete in the Application for Payment, without reduction of previous retainage, no further retainage will be withheld. Upon recommendation of the Contractor and prior written approval of Owner, a Subcontractor's retainage may be reduced by a percentage established and agreed upon by the Contractor and Owner. The full ten percent (10%) retainage may be reinstated with respect to remaining payments for identified Subcontractors Whose manner of completion of the

work and its progress do not remain satisfactory to the Owner, or if any surety withholds its consent, or for other good and sufficient reasons.

**§ 7.1.9** Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 7.1.10** In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## **§ 7.2 Final Payment**

**§ 7.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007 (as amended).
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

**§ 7.2.2** The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007 (as amended). The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007 (as amended). The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

**§ 7.2.3** If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007 (as amended). A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 60-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

**§ 7.2.4** If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

## ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007 (as amended). *(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007 (as amended).)*

**§ 8.1.1** Workers' Compensation and Employers' Liability meeting statutory limits mandated by state and federal laws. If (1) limits in excess of those required by statute are to be provided, or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:

**§ 8.1.2** Commercial General Liability including coverage for Premises-Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards):

\$ 2,000,000	Each Occurrence
\$ 4,000,000	General Aggregate
\$ 2,000,000	Personal and Advertising Injury
\$ 4,000,000	Products-Completed Operations Aggregate

- .1 The policy shall be endorsed to have the General Aggregate apply to this Project only.
- .2 Products and Completed Operations insurance shall be maintained for a minimum period of at least (1) year(s) after either 90 days following Substantial Completion or final payment, whichever is earlier.
- .3 The Contractual Liability insurance shall include coverage sufficient to meet the obligations in Section 3.18 of A201<sup>TM</sup>-1997 (as amended).

**§ 8.1.3** Automobile Liability (owned, non-owned and hired vehicles) for bodily injury and property damage:  
\$1,000,000 Each Accident

**§ 8.1.4** Other coverage:

\$ 25,000,000 – Umbrella Coverage

That portion of insurance including deductibles and bond premiums that can be directly attributed to this Contract and expenses for Subcontractor and Supplier Surety shall be reimbursed at the following rate: 1) Contractor's Subcontractor Supplier Default Insurance (SSDI) at nine-tenths of one percent (0.9%) of the Subcontractor/Supplier value; 2) Contractor's actual premium cost of any bonds obtained as subcontractor surety.

The cost of the Contractor's insurance program shall be reimbursed at the rate of \$7.50/1000 per thousand dollars of contract value. Rates shall be subject to adjustment on the first day of each calendar year if required by the Contractor.

The Construction Manager will maintain Builders Risk Insurance at the rate of \$0.15 per thousand of contract value per month to insure the components of the project while under construction and shall also maintain General Liability coverage as identified above to insure against losses to the adjacent structures from damage which may be caused by construction activity.

*(If Umbrella Excess Liability coverage is required over the primary insurance or retention, insert the coverage limits. Commercial General Liability and Automobile Liability limits may be attained by individual policies or by a combination of primary policies and Umbrella and/or Excess Liability policies. If Project Management Protective Liability Insurance is to be provided, state the limits here.)*

**§ 8.1.5** The Construction Manager shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source, and the cost

thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum.

*(Table deleted)*

## ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007 (as amended). However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007 (as amended), the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

- Arbitration pursuant to Section 15.4 of AIA Document A201–2007 (as amended)
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

*(Paragraphs deleted)*

## ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007 (as amended).

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

#### **§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price**

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-2007 (as amended).

**§ 10.2.1** If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 (as amended) shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

**§ 10.2.2** If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201-2007 (as amended) shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

#### **§ 10.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007 (as amended). In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2007 (as amended), except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

### **ARTICLE 11 MISCELLANEOUS PROVISIONS**

**§ 11.1** Terms in this Agreement shall have the same meaning as those in A201-2007 (as amended).

#### **§ 11.2 Ownership and Use of Documents**

Section 1.5 of A201-2007 (as amended) shall apply to both the Preconstruction and Construction Phases.

#### **§ 11.3 Governing Law**

Section 13.1 of A201-2007 (as amended) shall apply to both the Preconstruction and Construction Phases.

#### **§ 11.4 Assignment**

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007 (as amended), neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

#### **§ 11.5 Other provisions:**

**§ 11.5.1** Owner acknowledges that certain information provided to it by Contractor contains information deemed trade secret or proprietary to Contractor. Such information includes but is not limited to Contractor's research, development, methods, processes, techniques, operations, computer programs; pricing/price modeling, and financial data of Contractor, its subsidiaries, operating service groups and affiliates companies, including data provided in support of

applications for payment, change orders, or commercial information, including value engineering and constructability studies; current and prospective clients, subcontractors, and/or competitors; and proposals. Owner acknowledges the value of such information to the Contractor, and agrees to use reasonable diligence in protecting this information from unauthorized disclosures to third parties (excluding any governmental regulatory bodies entitled to access such information by law, or owner's parent, subsidiary of affiliated companies, or owner's auditor's or lenders to the extent such disclosure is necessary).

**§ 11.5.2** If Drawings are revised after the Drawings referenced in the Contract, The Owner shall have the Architect re-date all revised sheets and clearly identify all changes by bubble and delta number or other means acceptable to the Contractor and Owner. The Owner and Contractor acknowledge that it is difficult to determine and implement changes that are not so identified. Regardless if the Contract is amended to incorporate revised Drawings, the Guaranteed Maximum Price and Contract Time are subject to additional equitable adjustments for the cost and time impacts if implementing any changes not so identified.

## ARTICLE 12 SCOPE OF THE AGREEMENT

**§ 12.1** This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

**§ 12.2** The following documents comprise the Agreement:

- .1 AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201-2007 (as amended), General Conditions of the Contract for Construction
- .3 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:

- .4 AIA Document E202™-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

- .5 Other documents:

*(List other documents, if any, forming part of the Agreement.)*

This Agreement is entered into as of the day and year first written above.

**OWNER (Signature)**

Susan Heil, President, Board of Education  
*(Printed name and title)*

**CONSTRUCTION MANAGER (Signature)**

Stephen J. Clouten, Vice President of Operations  
*(Printed name and title)*

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September 22, 2011

## Crafton Tull Contract for Capital Projects

TO:           Board of Education

FROM:       Vicki Thomas

I will ask the Board to approve the contract with Crafton Tull & Associates, Inc. for capital projects.



## **Standard Form of Agreement Between Owner and Architect**

**AGREEMENT** made as of the Twenty-second day of September in the year Two Thousand Eleven

**BETWEEN** the Architect's client identified as the Owner:

Fayetteville Public School District  
1000 W. Stone  
Fayetteville, AR 72701

and the Architect:

Crafton, Tull & Associates, Inc.  
901 N. 47th Street  
Suite 200  
Rogers, AR 72756  
Telephone Number: 479-878-2451 Fax Number: 479-631-6224

for the following Project:

Renovations and Additions to Various Facilities  
Fayetteville, AR

The sites for the projects are as follows:

Project #1: The kitchens at Asbell, Leverett and Root Elementary Schools and Woodland and Ramay Jr. High Schools.

Project #2: The existing indoor soccer facility and other buildings at the High School Football / Baseball campus.

Project #3: The existing indoor baseball practice facility at the High School Football / Baseball campus.

Project #4: The eight (8) lane competition track to be built at the football practice field for Ramay Jr. High School.

The initial estimated budget for these projects is \$6,782,600.00. The procurement method is the Construction Manager system with Nabholz Construction Corp. being the Construction Manager.

The Owner and Architect agree as follows.

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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### EXHIBIT A INITIAL INFORMATION

#### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

Project #1: Install air conditioning in kitchens at Asbell Elementary, Leverett Elementary, Root Elementary, and Ramay and Woodland Jr. High Schools.

Project #2: Demolish and replace concession stand at football field. At soccer building, upgrade finishes and air conditioning (connecting it to an indoor baseball practice facility). Remodel the existing locker room and convert pool equipment area into additional locker room space. Construct connecting link from the remodeled soccer building to the adjacent administration building. Construct new band storage under home bleacher at football field. Add square footage to locker room to assure enough locker space. Repair roof and air condition space.

Project #3: Add additional space to existing baseball practice facility to create 160 x 200 foot space for football, soccer and other sports indoor practice area.

Project #4: A new eight lane competition track with lighting to be located at Ramay Jr. High around the existing football practice field. Home and visitor stands with pressbox, locker rooms for 80 students, concession stand and restrooms, and equipment storage area.

The initial estimated budget for these projects is \$6,782,600.00. The procurement method is the Construction Manager system with Nabholz Construction Corp. being the Construction Manager.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

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Project #1: June 2012  
Project #2: January 2012  
Project #3: July 2012  
Project #4: January 2013

.2 Substantial Completion date:

Project #1: August 2012  
Project #2: July 2012  
Project #3: January 2013  
Project #4: June 2013

**§ 1.3** The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

**§ 2.1** The Architect shall provide the professional services as set forth in this Agreement.

**§ 2.2** The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

**§ 2.3** The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

**§ 2.4** Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

**§ 2.5** The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

.1 General Liability

\$1,000,000 each occurrence, \$2,000,000 aggregate

.2 Automobile Liability

\$1,000,000 combined single limit

.3 Workers' Compensation

\$100,000 each accident

.4 Professional Liability

\$5,000,000 per claim, \$5,000,000 aggregate

## ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

**§ 3.1** The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in Article 3 are Additional Services.

**§ 3.1.1** The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

**§ 3.1.2** The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants but will not have responsibility for their errors or omissions. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

**§ 3.1.3** As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary as the Project proceeds until the commencement of construction.

**§ 3.1.4** The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's written approval.

**§ 3.1.5** The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

**§ 3.1.6** The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### **§ 3.2 SCHEMATIC DESIGN PHASE SERVICES**

**§ 3.2.1** The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

**§ 3.2.2** The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

**§ 3.2.3** The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsive design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

**§ 3.2.4** Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

**§ 3.2.5** Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

**§ 3.2.5.1** The Architect shall consider environmentally responsive design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsive design services under Article 4.

**§ 3.2.5.2** The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

**§ 3.2.6** The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

**§ 3.2.7** The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

### **§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES**

**§ 3.3.1** Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

**§ 3.3.2** The Architect shall update the estimate of the Cost of the Work.

**§ 3.3.3** The Architect shall submit the Design Development documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

### **§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES**

**§ 3.4.1** Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

**§ 3.4.2** The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

**§ 3.4.3** During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

**§ 3.4.4** The Architect shall update the estimate for the Cost of the Work.

**§ 3.4.5** The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

### **§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES**

#### **§ 3.5.1 GENERAL**

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

### § 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### § 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

## § 3.6 CONSTRUCTION PHASE SERVICES

### § 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

### § 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work.

completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

**§ 3.6.2.2** The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

**§ 3.6.2.3** The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

**§ 3.6.2.4** Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

**§ 3.6.2.5** Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### **§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR**

**§ 3.6.3.1** The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

**§ 3.6.3.2** The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 3.6.3.3** The Architect shall maintain a record of the Applications and Certificates for Payment.

### **§ 3.6.4 SUBMITTALS**

**§ 3.6.4.1** The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

**§ 3.6.4.2** In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety

precautions or, unless otherwise specifically stated in writing by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 3.6.4.3** If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, but will not have responsibility for their errors or omissions.

**§ 3.6.4.4** Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

**§ 3.6.4.5** The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

#### **§ 3.6.5 CHANGES IN THE WORK**

**§ 3.6.5.1** The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

**§ 3.6.5.2** The Architect shall maintain records relative to changes in the Work.

#### **§ 3.6.6 PROJECT COMPLETION**

**§ 3.6.6.1** The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

**§ 3.6.6.2** The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

**§ 3.6.6.3** When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

**§ 3.6.6.4** The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

**§ 3.6.6.5** Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

## ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

*(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming	Architect/Owner	CTA
§ 4.1.2 Multiple preliminary designs	Architect	One preliminary design will be provided
§ 4.1.3 Measured drawings	Not Provided	N/A
§ 4.1.4 Existing facilities surveys	Provided	Included in Fee
§ 4.1.5 Site Evaluation and Planning (B203™-2007)	N/A	
§ 4.1.6 Building information modeling	Not Provided	
§ 4.1.7 Civil engineering	Architect	Included in Fee
§ 4.1.8 Landscape design	Architect	Included in Fee
§ 4.1.9 Architectural Interior Design (B252™-2007)	Architect	CTA (Finishes only/not furnishings)
§ 4.1.10 Value Analysis (B204™-2007)	Not Provided	
§ 4.1.11 Detailed cost estimating	Not Provided	
§ 4.1.12 On-site project representation	Not Provided	
§ 4.1.13 Conformed construction documents	Not Provided	
§ 4.1.14 As-designed record drawings	Not Provided	
§ 4.1.15 As-constructed record drawings	Architect	Contractor will provide redlined CD's
<i>(Row deleted)</i>		
§ 4.1.16 Post occupancy evaluation	Architect	CTA 1 <sup>st</sup> year-end review
§ 4.1.17 Facility Support Services (B210™-2007)	Not Provided	
§ 4.1.18 Tenant-related services	Not Provided	
§ 4.1.19 Coordination of Owner's consultants	Not Provided	N/A
§ 4.1.20 Telecommunications/data design	Not Provided	
§ 4.1.21 Security Evaluation and Planning (B206™-2007)	Not Provided	
§ 4.1.22 Commissioning (B211™-2007)	Not Provided	
§ 4.1.23 Extensive environmentally responsive design	Not Provided	
§ 4.1.24 LEED® Certification (B214™-2007)	Not Provided	
§ 4.1.25 Fast-track design services	Not Provided	
§ 4.1.26 Historic Preservation (B205™-2007)	Not Provided	
§ 4.1.27 Furniture, Finishings, and Equipment Design (B253™-2007)	Not Provided	

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

Init.

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User Notes:

**§ 4.3.1** Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsive design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

**§ 4.3.2** To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

**§ 4.3.3** The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 Bi-weekly ( ) visits to the site by the Architect over the duration of the Project during construction
- .3 Two ( 2 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two ( 2 ) inspections for any portion of the Work to determine final completion

**§ 4.3.4** If the services covered by this Agreement have not been completed within Twenty-four ( 24 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

**§4.3.5 Definition of Interior Design Services.** Interior Design included in Basic Services are limited to selection and coordination of finishes for interior building surfaces. Other services in connection with selection, procurement or installation of furniture, furnishings and related equipment are not included and are deemed Additional Services, as listed in Section 4.1.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

**§ 5.1** Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

**§ 5.2** The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

**§ 5.3** The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

**§ 5.4** The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including invert and depths. All the information on the survey shall be referenced to a Project benchmark.

*(Paragraph deleted)*

**§ 5.5** The Architect shall furnish, as a reimbursable expense, services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

**§ 5.6** The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

**§ 5.7** The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

**§ 5.8** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

**§ 5.9** The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

**§ 5.10** Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

**§ 5.11** Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

**§ 5.12** The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

## ARTICLE 6 COST OF THE WORK

**§ 6.1** For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include construction manager's general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

**§ 6.2** The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

**§ 6.3** In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

**§ 6.4** If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

**§ 6.5** If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

**§ 6.6** If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- 1 give written approval of an increase in the budget for the Cost of the Work;
- 2 authorize rebidding or renegotiating of the Project within a reasonable time;
- 3 terminate in accordance with Section 9.5;
- 4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- 5 implement any other mutually acceptable alternative.

**§ 6.7** If the Owner chooses to proceed under Section 6.6.4 and the last lowest bona fide bidder is within 15% of the budget, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

## ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Files in electronic media format of text, data, graphics, or other types that are furnished by the Architect to the Owner or to the Contractor upon the Owner's direction are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

**§ 8.1.3** The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

**§ 8.2 MEDIATION**

**§ 8.2.1** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

**§ 8.2.2** The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 8.2.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**§ 8.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

**§ 8.3 ARBITRATION (paragraph deleted)**

*(Paragraphs deleted)*

**§ 8.3.4 CONSOLIDATION OR JOINDER (paragraph deleted)**

*(Paragraphs deleted)*

**ARTICLE 9 TERMINATION OR SUSPENSION**

**§ 9.1** If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

**§ 9.2** If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

**§ 9.3** If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

**§ 9.4** Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

**§ 9.5** The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

**§ 9.6** In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

**§ 9.7** Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

**§ 9.8** The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

**§ 10.1** This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

**§ 10.2** Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction.

**§ 10.3** The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

**§ 10.4** If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

**§ 10.5** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

**§ 10.6** Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

**§ 10.7** The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

**§ 10.8** If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to

any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

**§ 10.9** In the event of a negligent error or omission in the Architect's designs, plans, Specifications, or other services ("the defect"), the Architect's sole responsibility and liability for the defect shall not exceed the Architect's services to re-perform or redesign the plans, specifications, services or other deliverables related to the defect, plus the reasonable direct damages caused by the defect. The Architect shall not be liable for and damages shall not include the cost of any addition, betterment, or improvement to the Work, nor for any item that otherwise would have been required to complete the Work, nor the cost and expense that would have been incurred by the Owner had such defect not occurred.

## ARTICLE 11 COMPENSATION

**§ 11.1** For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

Project #1: Kitchen HVAC

Construction Documents	\$57,300.00
Construction Administration/Bidding	\$20,400.00

Project #2: Multi-purpose Indoor Facilities Modifications and Other

Construction Documents	\$88,200.00
Construction Administration/Bidding	\$28,000.00

Project #3: Indoor Sports Practice Facility Building Additions and Modifications

Construction Documents	\$96,000.00
Construction Administration/Bidding	\$30,000.00

Project #4: 8 Lane Competition Track / Support Facilities

Construction Documents	\$89,000.00
Construction Administration/Bidding	\$30,000.00

The fees for Projects 1-4 are lump sums but do not include reimbursable expenses.

Public Utilities Relocation: Requirements not known at this time. Water and Sewer will have to be moved for the Indoor Practice Facilities.

Estimated Construction Documents Cost	\$10,000.00*
Estimated Construction Administration	\$10,000.00*

\*When City requirements are fully determined, this will be firmed up.

**§ 11.2** For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

*(Paragraph deleted)*

Negotiated Lump Sum or Hourly according to the attached Standard Hourly Rate Schedule.

**§ 11.3** For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

*(Paragraph deleted)*

Negotiated Lump Sum or Hourly according to the attached Standard Hourly Rate Schedule.

**§ 11.4** Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus one point one five ( 1.15% ), or as otherwise stated below:

**§ 11.5** Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Init.

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User Notes:

(1785677618)

Schematic Design Phase	Fifteen	percent (	15	%)
Design Development Phase	Twenty	percent (	20	%)
Construction Documents Phase	Forty	percent (	40	%)
Bidding or Negotiation Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
<b>Total Basic Compensation</b>	<b>one hundred</b>	<b>percent (</b>	<b>100</b>	<b>%)</b>

**§ 11.6** When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

**§ 11.7** The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

#### Exhibit B – Standard Hourly Rate Schedule

Employee or Category	Rate
----------------------	------

#### § 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

**§ 11.8.1** Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- 1 Transportation and authorized out-of-town travel and subsistence;
- 2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- 3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- 4 Printing, reproductions, plots, standard form documents;
- 5 Postage, handling and delivery;
- 6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- 7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- 8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- 9 All taxes levied on professional services and on reimbursable expenses;
- 10 Site office expenses; and
- 11 Other similar Project-related expenditures.

**§ 11.8.2** For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus one point one five ( 1.15% ) of the expenses incurred.

#### § 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

To be negotiated

#### § 11.10 PAYMENTS TO THE ARCHITECT

**§ 11.10.1** An initial payment of Zero (\$ 0.00 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

**§ 11.10.2** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty ( 30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.  
(Insert rate of monthly or annual interest agreed upon.)

At the highest rate allowed by Arkansas law.

**§ 11.10.3** The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

**§ 11.10.4** Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

## ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

None

## ARTICLE 13 SCOPE OF THE AGREEMENT

**§ 13.1** This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

**§ 13.2** This Agreement is comprised of the following documents listed below:

.1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect  
(Paragraphs deleted)

.2 Other documents:  
Exhibit "A" – Rider to AIA B101-2007  
Exhibit "B" – Standard Hourly Rate Schedule

This Agreement entered into as of the day and year first written above.

**OWNER**

(Signature)  
Susan Heil, President  
Board of Education  
(Printed name and title)

**ARCHITECT**

(Signature)  
David Swearingen, A.I.A.  
Senior VP Architecture  
(Printed name and title)

Init.

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User Notes:

**FAYETTEVILLE SCHOOL DISTRICT  
(RENOVATIONS AND ADDITIONS TO VARIOUS FACILITIES)  
RIDER TO AIA B101 – 2007 OWNER-ARCHITECT AGREEMENT WITH  
CRAFTON TULL & ASSOCIATES, INC.**

**1. Conflicting Terms.**

Should any conflict exist between the terms of the standard AIA B101-2007 agreement and this Rider, the terms of this Rider shall prevail. The Agreement between the parties consists of the standard form agreement including any modification thereto and this Rider.

**2. Correction of Drawings.**

Any designs, drawings or specifications prepared or furnished by Architect that contain errors, conflicts or omissions will be promptly corrected by Architect at no additional cost to Owner. Owner's approval, acceptance, use of or payment for all or any part of Architect's services shall in no way alter Architect's obligations or Owner's rights hereunder.

**3. Quality of Documents.**

Architect agrees that all Drawings and Specifications and other documents prepared by Architect for the Project which are utilized by Owner and/or Owner's contractor or contractors, shall be reasonably accurate and complete as is customary for typical construction documents. Architect shall notify Owner in a prompt and timely manner of any discovered discrepancies, inconsistencies or missing information necessary to provide reasonably accurate and complete documents. Failure to so notify Owner will be considered a breach of the standard of professional practice set forth in Section 2.2 of AIA B101.

**4. Coordination of Services.**

Architect shall be fully responsible for coordinating all Architect's Basic and Additional Services required under this Agreement regardless of whether performed by its own employees or by consultants hired by Architect to perform a portion of its services ("Subconsultants"). The purpose of such coordination is to ensure that the services required are performed in a reasonably efficient, timely and economical manner. Architect shall be responsible to Owner for the services furnished to Architect by any Subconsultant to the same extent as if Architect had furnished the service itself. Architect also agrees to coordinate, and resolve any inconsistencies its work and the work of its consultants. All of Architect's contracts with his Subconsultants shall be in writing, signed by both parties, and shall include the following provision: "The Owner is intended to be a third party beneficiary of this agreement."

**5. Compliance With Laws.**

Architect shall provide a design which when constructed in accordance with the Contract Documents will comply with all applicable federal, state and local laws, statutes,

ordinances, rules, regulations, orders or other legal requirements, including but not limited to all zoning, restrictions or requirements of record, building, occupancy, environmental, disabled persons accessibility and land use laws, requirements, regulations and ordinances relating to the construction, use and occupancy of the Project (collectively "Governmental Requirements") existing on the date of this Agreement and which may be enacted prior to Owner's approval of completed Construction Documents. However, if such Government Requirements change after the Architect has started work, the Owner shall compensate the Architect to change completed or partially completed work as an Additional Service. Architect shall use its best efforts to avoid incorporating into the Project design, elements that would give rise to code interpretation questions and to discuss in advance all such situations with Owner.

**6. Compliance With Owner/Lender Requests.**

To the extent applicable, Owner may have to comply with Lender requirements, including requirements for the issuance of bonds, and the parties acknowledge that Owner's approvals and other actions regarding Architect's services may be affected by Lender requirements. Architect shall comply with all reasonable requests by Owner or the Lender for reports, certificates, statements and further services which are not inconsistent with the terms and conditions of this Agreement at no additional cost to the Owner.

**7. Exclusion of Hazardous Materials.**

Architect shall not design, specify or incorporate in the Drawings or Specifications for the Project, and shall not approve any shop drawings specifying any Hazardous Materials, in such manner as would violate the requirements of all existing laws, ordinances, codes, rules and regulations, orders and decisions of all government authorities having jurisdiction over the Site, the Work or any part of either, or would cause substantial damage or a risk of substantial damage to the environment, or in such a manner as to leave any residue which could be hazardous to persons or property or cause liability to Owner. For purposes of this Agreement the term "Hazardous Materials" shall include, but shall not be limited to, substances currently defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended 42 U.S.C. Sec. 9061 et seq, Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1802, the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6910 et seq., and all other federal, state, and local environmental laws, rules and regulations as all of the above may be amended from time to time.

**8. Notification of Material Problems.**

Architect shall promptly advise Owner of any problems which come to its attention that may cause a delay in the completion of the Project, or any portion thereof, or in the performance of Architect's services. Architect acknowledges that time is of the essence in this Agreement.

**9. Owner's Review of Application for Payment.**

Promptly upon receipt, Owner shall review Architect's Application for Payment. If

Owner disputes in good faith all or any portion of any statement, Owner shall notify Architect within twenty (20) days of receipt of the disputed statement. Such notification shall clearly indicate that portion of the statement which Owner disputes or for which Owner claims a setoff and shall include a reasonably detailed explanation of the reasons for disputing such portion or for the setoff respectively. Any statement or portion of a statement not disputed by Owner in the manner and within the time period set forth above shall be paid by Owner within thirty (30) days of receipt; provided, that such payment shall not act as Owner's waiver of any claims that may be asserted against Architect for the performance of defective or deficient services. Owner shall not be required to make payment to Architect on account of any amount disputed in good faith by Owner in the manner and within the time period set forth above until the matter in dispute has been resolved by the parties. Any amount so disputed shall not be deemed to be an amount due Architect under this Agreement until the matter is so resolved by the parties. If the resolution of the matter indicates that Architect is entitled to be paid all or any portion of such disputed amount, then such amount to be paid to Architect shall be due and payable within ten (10) days after resolution of the matter.

10. **No Charge for Travel Time.**

Unless otherwise agreed to in writing by Owner, there shall be no charge for time spent in travel.

11. **Written Consent for Additional Services.**

Architect shall not perform or be reimbursed for any Additional Service unless Owner expressly authorizes same in writing prior to Architect commencing such Additional Service. Owner agrees to put any such authorization in writing in a timely manner.

12. **Indemnity From Architect's Subconsultants.**

Architect shall protect, defend, indemnify, and hold harmless Owner from and against any claims, actions, liabilities, losses, damages, costs and expenses (including attorneys' fees) in the event that a claim or mechanic's lien is asserted by one of Architect's Subconsultants for non-payment by Architect to that Subconsultant after Owner has made payment to Architect on account of that Subconsultant's work.

13. **Owner's Reviews and Approvals.**

Notwithstanding anything to the contrary contained in this Agreement, Owner's review and approval of any and all documents or other matters required herein shall be for the purpose of providing Architect with information as to Owner's objectives and goals with respect to the Project and not for the purpose of determining the accuracy and completeness of such documents, and in no way should any such review and approval alter Architect's responsibilities hereunder and with respect to such documents.

**14. Records Maintained on Generally Recognized Accounting Basis.**

Records which provide the basis for Architect's compensation and Reimbursable Expenses relating to the Project and records of accounts between Owner and Architect shall be kept on a generally recognized accounting basis. Such records shall be available for audit by Owner or his authorized' representative during normal business hours at Architect's principal place of business for a period of one year following completion of the Project, upon request of Owner.

**15. Use of Drawings.**

Owner is granted an irrevocable license to use the Drawings, Specifications and other documents prepared by Architect for this Project and for future work at the property which is the site of the Project, but not at any other location. Architect shall not use or allow to be used the Drawings, Specifications and reports or the unique design aspects of this Project for any other project, without the prior written approval of Owner. Architect may re-use standard specification texts and details.

**16. Insurance Requirements of Subconsultants.**

Architect agrees to require Subconsultants to comply with the insurance provisions required of Architect pursuant to this Agreement unless Architect and Owner mutually agree to modify these requirements for Subconsultants whose work is of relatively small scope. Architect agrees that it will contractually obligate its Subconsultants to advise Architect promptly of any changes or lapses of the requisite insurance coverages and Architect agrees to promptly advise Owner of any such notices Architect receives from its Subconsultants. Architect agrees that it will contractually obligate its Subconsultants to indemnify and hold harmless Owner to the same extent that Architect is required to do so as provided in this Agreement. Architect assumes all responsibility for monitoring Subconsultant contracts and insurance certificates for compliance with the insurance and other provisions of this Agreement until final completion of the Project.

**17. Owner's Suspension of Architect's Services.**

Upon written notice to Architect, Owner may order that Architect suspend all or any part of the services provided under this Agreement. Owner shall pay Architect all monies otherwise due hereunder to the date of the suspension plus all out-of-pocket expenses directly related to such suspension. Owner shall not have any obligation to pay or reimburse Architect for lost profits and/or unabsorbed overhead or any other consequential or incidental damages. If the Project is suspended for more than six (6) months, and then resumed, Architect shall be compensated for reasonable costs of re-familiarizing itself with the Project.

**18. Owner's Termination of Agreement for Convenience.**

Owner may terminate this Agreement for the convenience of Owner, upon seven (7) days advance written notice to Architect, in which case Owner shall pay Architect for all monies otherwise due hereunder to the date of termination plus all out-of-pocket expenses

directly related to the termination, but Owner shall have no obligation to pay or reimburse Architect for lost profits or unabsorbed overhead, or any other consequential or incidental damages.

19. **Delivery by Architect of Completed and In-Progress Documents.**

In the event of suspension or termination for convenience, upon request of Owner and payment of all fees pursuant to the prior two paragraphs, Architect shall promptly provide Owner with reproducible drawings and computer tapes or disks of all documents completed or in progress on the date of termination. Architect shall not be reimbursed for reproduction costs associated with maintaining or storing Drawings, Specifications, or computer tapes or disks for his own use.

20. **Termination for Cause.**

In the event that Architect fails to perform in accordance with the terms and conditions of this Agreement, Owner may terminate this Agreement by sending a Notice of Termination which shall be effective seven (7) days after its date of transmittal if Architect does not cure such default within the seven days. In the event of termination for cause by Owner, Architect shall be entitled to be compensated for all services performed prior to receipt of written notice from Owner of such termination, together with Reimbursable Expenses incurred, up to the effective date of the termination. However, Owner shall be entitled to offset any amounts due and owing Architect pursuant to this provision by the amounts of any damages incurred by Owner as a result of Architect's breach, which offset shall not prejudice the right of Owner to recover additional damages or to exercise any other remedy at law or in equity. In no event shall Architect be entitled to receive termination expenses, unabsorbed overhead or lost profit or any other incidental or consequential damages if terminated for cause. If Owner terminated this Agreement for cause, and the termination is later found or agreed to have been improper then the termination will be construed as a termination for convenience pursuant to paragraph 20 hereof.

21. **Indemnification by Architect.**

The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's duty to indemnify the Owner under this provision shall be limited to the insurance coverages described in AIA B101 Section 2.5, infra. Paragraph 8.1.3 of AIA B101 is hereby deleted.

22. **Continuing Obligations During Disputes.**

In the event of any Controversy between Owner and Architect under this Agreement, including but not limited to, whether or not any services Owner expects Architect to perform are within the scope of Basic Services or any dispute as to whether or not Architect is

entitled to additional compensation for any Work requested, Architect shall continue to proceed diligently with the performance of its services under this Agreement pending resolution of the dispute, and Owner agrees to pay Architect in accordance with this Agreement for all services rendered by Architect which are not the subject of the Controversy.

23. **Waiver.**

No consent or waiver by Owner or Architect shall be effective unless it is in writing and then only to the extent specifically stated. Failure on the part of any party to this Agreement to enforce any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder.

24. **Choice of Law.**

The laws of the State of Arkansas shall govern this Agreement and all Controversies arising hereunder.

25. **Choice of Forum.**

All mediation regarding this Agreement and any proceedings over Controversies arising hereunder shall take place in Fayetteville, Arkansas.

Architect: Crafton Tull & Associates, Inc. \_\_\_\_\_

Owner: Fayetteville School District

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

President of the Board of Directors



**Crafton Tull**  
architecture | engineering | surveying

Exhibit "B"  
Standard Hourly Rate Schedule  
Effective August 1, 2011

Category	Hourly Rate
ARCHITECTURE PRINCIPAL .....	\$ 150
SR. ARCHITECTURE MANAGER .....	\$ 140
ARCHITECTURE MANAGER .....	\$ 125
SR. PROJECT ARCHITECT .....	\$ 105
PROJECT ARCHITECT .....	\$ 95
ARCHITECT INTERN II .....	\$ 85
ARCHITECT INTERN I .....	\$ 75
SR. ARCHITECTURAL DESIGNER .....	\$ 105
ARCHITECTURAL DESIGNER III .....	\$ 95
ARCHITECTURAL DESIGNER II .....	\$ 85
ARCHITECTURAL DESIGNER I .....	\$ 75
ARCHITECTURE CAD TECHNICIAN III .....	\$ 70
ARCHITECTURE CAD TECHNICIAN II .....	\$ 55
ARCHITECTURE CAD TECHNICIAN I .....	\$ 40
SR. INTERIOR DESIGNER .....	\$ 95
INTERIOR DESIGNER III .....	\$ 80
INTERIOR DESIGNER II .....	\$ 65
INTERIOR DESIGNER I .....	\$ 50
INTERIORS CAD TECHNICIAN I .....	\$ 40
ENGINEERING PRINCIPAL .....	\$ 150
SR. ENGINEERING MANAGER .....	\$ 140
ENGINEERING MANAGER .....	\$ 125
SR. PROJECT ENGINEER .....	\$ 105
PROJECT ENGINEER .....	\$ 95
ENGINEER INTERN II .....	\$ 85
ENGINEER INTERN I .....	\$ 75
SR. ENGINEERING DESIGNER .....	\$ 105
ENGINEERING DESIGNER III .....	\$ 95
ENGINEERING DESIGNER II .....	\$ 85
ENGINEERING DESIGNER I .....	\$ 75
ENGINEERING CAD TECHNICIAN III .....	\$ 70
ENGINEERING CAD TECHNICIAN II .....	\$ 55
ENGINEERING CAD TECHNICIAN I .....	\$ 40

Category	Hourly Rate
SR. LANDSCAPE ARCHITECT .....	\$ 110
PROJECT LANDSCAPE ARCHITECT .....	\$ 90
LANDSCAPE ARCHITECTURE DESIGNER .....	\$ 80
LANDSCAPE ARCHITECT INTERN .....	\$ 55
PLANNING MANAGER .....	\$ 125
SR. PLANNER .....	\$ 110
PLANNER .....	\$ 90
SR. INSPECTOR .....	\$ 85
INSPECTOR II .....	\$ 75
INSPECTOR I .....	\$ 45
PROFESSIONAL SURVEYOR PRINCIPAL .....	\$ 140
SR. PROFESSIONAL SURVEYOR .....	\$ 120
PROFESSIONAL SURVEYOR .....	\$ 85
SURVEYOR INTERN .....	\$ 75
SURVEY PARTY CHIEF .....	\$ 60
SURVEY TECHNICIAN III .....	\$ 55
SURVEY TECHNICIAN II .....	\$ 40
SURVEY TECHNICIAN I .....	\$ 30
GIS ANALYST .....	\$ 85
GIS TECHNICIAN III .....	\$ 55
GIS TECHNICIAN II .....	\$ 40
ADMINISTRATIVE PRINCIPAL .....	\$ 150
ADMINISTRATIVE MANAGER .....	\$ 120
ADMINISTRATIVE IV .....	\$ 80
ADMINISTRATIVE III .....	\$ 60
ADMINISTRATIVE II .....	\$ 45
ADMINISTRATIVE I .....	\$ 35
GPS Equipment .....	\$35/Hour
Robotic Survey Equipment .....	\$20/Hour
Job Related Mileage .....	\$0.55/Mile
Black and white 8.5"x11" Copies .....	\$0.15/sheet
Color 8.5"x11" Copies .....	\$1.50/sheet
Photo Paper Color Plan Sheet Copies .....	\$0.75/sq. ft.
Reproducible Plan Copies (Vellum) .....	\$1.50/sq. ft
Reproducible Plan Copies (Bond) .....	\$0.35/sq. ft.
<b>All rates are subject to change without notice.</b>	



September 22, 2011

## Audit Contract

TO: Board of Education

FROM: Lisa Morstad

I will ask the Board to approve the contract with Hudson, Cisne & Co. for audit services.



September 1, 2011

Fayetteville School District  
1000 West Stone Street  
Fayetteville, AR 72701

We are pleased to confirm our understanding of the services we are to provide Fayetteville School District (the "District") for the year ended June 30, 2011. We will audit the financial statements of the governmental activities, each major fund, and the aggregate remaining fund information, which collectively comprise the District's basic financial statements as of and for the year ended June 30, 2011. The following supplementary information accompanying the basic financial statements is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

1. Management's Discussion and Analysis.

Also, the following additional information accompanying the basic financial statements will be subjected to the auditing procedures applied in our audit of the financial statements upon which we will provide an opinion in relation to the basic financial statements.

1. Schedule of expenditures of federal awards

2. Budgetary comparison schedule - general fund

### **Audit Objectives**

The objective of our audit is the expression of opinions as to whether your basic financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the additional information referred to in the first paragraph when considered in relation to the basic financial statements taken as a whole. The objective also includes reporting on -

- Internal control related to the financial statements and compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.
- Internal control related to major programs and an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*.

The reports on internal control and compliance will each include a statement that the report is intended solely for the information and use of management, the body or individuals charged with governance, others within the entity, specific legislative or regulatory bodies, federal awarding agencies, and if applicable, pass-through entities, and is not intended to be and should not be used by anyone other than these specified parties.

Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America; the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the provisions of OMB Circular A-133, and will include tests of accounting records, a determination of major program(s) in accordance with OMB Circular A-133, and other procedures we consider necessary to enable us to express such opinions and to render the required reports. If our opinions on the financial statements or the Single Audit compliance opinions are other than unqualified, we will fully discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or to issue a report as a result of this engagement.

### **Management Responsibilities**

Management is responsible for the basic financial statements and all accompanying information as well as all representations contained therein. Management is also responsible for preparation of the schedule of expenditures of federal awards in accordance with the requirements of OMB Circular A-133. As part of the audit, we will assist with preparation of your financial statements, schedule of expenditures of federal awards, and related notes. You are responsible for making all management decisions and performing all management functions relating to the financial statements, schedule of expenditures of federal awards, and related notes and for accepting full responsibility for such decisions. You will be required to acknowledge in the management representation letter our assistance with preparation of the financial statements and the schedule of expenditures of federal awards and that you have reviewed and approved the financial statements, schedule of expenditures of federal awards, and related notes prior to their issuance and have accepted responsibility for them. Further, you are required to designate an individual with suitable skill, knowledge, or experience to oversee any nonaudit services we provide and for evaluating the adequacy and results of those services and accepting responsibility for them.

Management is responsible for establishing and maintaining effective internal controls, including internal controls over compliance, and for monitoring ongoing activities, to help ensure that appropriate goals and objectives are met. You are also responsible for the selection and application of accounting principles; for the fair presentation in the financial statements of the respective financial position of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the District and the respective changes in financial position and, where applicable, cash flows in conformity with U.S. generally accepted accounting principles; and for compliance with applicable laws and regulations and the provisions of contracts and grant agreements.

Management is also responsible for making all financial records and related information available to us and for ensuring that management and financial information is reliable and properly recorded. Your responsibilities also include, including identifying significant vendor relationships in which the vendor has responsibility for program compliance and for the accuracy and completeness of that information. Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us

in the representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud or illegal acts affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud or illegal acts could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the entity complies with applicable laws, regulations, contracts, agreements, and grants. Additionally, as required by OMB Circular A-133, it is management's responsibility to follow up and take corrective action on reported audit findings and to prepare a summary schedule of prior audit findings and a corrective action plan.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying for us previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

### **Audit Procedures—General**

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity. Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because an audit is designed to provide reasonable, but not absolute assurance and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements or noncompliance may exist and not be detected by us. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or major programs. However, we will inform you of any material errors and any fraudulent financial reporting or misappropriation of assets that come to our attention. We will also inform you of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. We will include such matters in the reports required for a Single Audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

### **Audit Procedures—Internal Controls**

Our audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

As required by OMB Circular A-133, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to OMB Circular A-133.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, *Government Auditing Standards*, and OMB Circular A-133.

### **Audit Procedures—Compliance**

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the District's compliance with applicable laws and regulations and the provisions of contracts and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

OMB Circular A-133 requires that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with applicable laws and regulations and the provisions of contracts and grant agreements applicable to major programs. Our procedures will consist of tests of transactions and other applicable procedures described in the *OMB Circular A-133 Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each of the District's major programs. The purpose of these procedures will be to express an opinion on the District's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to OMB Circular A-133.

### **Engagement Administration, Fees, and Other**

At the conclusion of the engagement, we will complete the appropriate sections of the Data Collection Form that summarizes our audit findings, if any. We will coordinate with management to submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditors' reports, and corrective action plan) along with the Data Collection Form to the federal audit clearinghouse. We will also coordinate with you the electronic submission and certification. The Data Collection Form and the reporting package must be submitted within the earlier of 30 days after receipt of the auditors' reports or nine months after the end of the audit period.

The audit documentation for this engagement is the property of Hudson, Cisne & Co. LLP and constitutes confidential information. However, pursuant to authority given by law or regulation, we may be requested to make certain audit documentation available to the Department of Education or its designee, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Hudson, Cisne & Co. LLP's personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of five years after the report release or for any additional period requested by the Department of Education. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

We expect to begin our interim fieldwork on October 10, 2011 and our year end fieldwork on November 28, 2011. Corey Moline is the engagement principal and is responsible for supervising the engagement and signing the report. As outlined in our proposal dated August 17, 2011, our fee for these services will be \$33,470. The fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit.

*Government Auditing Standards* require that we provide you with a copy of our most recent external peer review report and any letter of comment, and any subsequent peer review reports and letters of comment received during the period of the contract. Our 2008 peer review report accompanies this letter.

We appreciate the opportunity to be of service to Fayetteville School District and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Very truly yours,

*Hudson, Cisne & Co. LLP*

**RESPONSE:**

This letter correctly sets forth the understanding of Fayetteville School District.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



Whitehorn Tankersley & Co., PLLC

CERTIFIED PUBLIC ACCOUNTANTS

670 OAKLEAF OFFICE LANE / MEMPHIS, TENNESSEE 38117-4811 / (901) 767-5080 / (901) 767-5263 FAX

August 12, 2008

To the Partners  
Hudson Cisne & Co. LLP

We have reviewed the system of quality control for the accounting and auditing practice of Hudson Cisne & Co. LLP (the firm) in effect for the year ended May 31, 2008. A system of quality control encompasses the firm's organizational structure, the policies adopted and procedures established to provide it with reasonable assurance of conforming with professional standards. The elements of quality control are described in the Statements on Quality Control Standards issued by the American Institute of CPAs (AICPA). The firm is responsible for designing a system of quality control and complying with it to provide the firm reasonable assurance of conforming with professional standards in all material respects. Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance with its system of quality control based on our review.

Our review was conducted in accordance with standards established by the Peer Review Board of the AICPA. During our review, we read required representations from the firm, interviewed firm personnel and obtained an understanding of the nature of the firm's accounting and auditing practice, and the design of the firm's system of quality control sufficient to assess the risks implicit in its practice. Based on our assessments, we selected engagements and administrative files to test for conformity with professional standards and compliance with the firm's system of quality control. The engagements selected represented a reasonable cross-section of the firm's accounting and auditing practice with emphasis on higher-risk engagements. The engagements selected included among others, audits of Employee Benefit Plans and engagements performed under Government Auditing Standards. Prior to concluding the review, we reassessed the adequacy of the scope of the peer review procedures and met with firm management to discuss the results of our review. We believe that the procedures we performed provide a reasonable basis for our opinion.

In performing our review, we obtained an understanding of the system of quality control for the firm's accounting and auditing practice. In addition, we tested compliance with the firm's quality control policies and procedures to the extent we considered appropriate. These tests covered the application of the firm's policies and procedures on selected engagements. Our review was based on selected tests therefore it would not necessarily detect all weaknesses in the system of quality control or all instances of noncompliance with it. There are inherent limitations in the effectiveness of any system of quality control and therefore noncompliance with the system of quality control may occur and not be detected. Projection of any evaluation of a system of quality control to future periods is

MEMBER  
AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS  
AICPA DIVISION OF FIRMS: PRIVATE COMPANIES PRACTICE SECTION  
TENNESSEE SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS

subject to the risk that the system of quality control may become inadequate because of changes in conditions, or because the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the system of quality control for the accounting and auditing practice of Hudson Cisne & Co. LLP in effect for the year ended May 31, 2008, has been designed to meet the requirements of the quality control standards for an accounting and auditing practice established by the AICPA and was complied with during the year then ended to provide the firm with reasonable assurance of conforming with professional standards.

Whitehorn Tankersley & Co., PLLC



September 22, 2011

## Qualified School Construction Bond Ratification

TO:                   Board of Education

FROM:               Lisa Morstad

I will ask the Board to approve the resolution to authorize the issuance of \$1,140,000 in Qualified School Construction Bonds.

# Stephens

Dennis R. Hunt  
Senior Vice President and Manager  
Stephens Inc.

Jackson T. Stephens, 1923-2005  
Chairman Emeritus in Perpetuity

September 9, 2011

Ms. Vicki Thomas  
Superintendent  
Fayetteville School District  
P.O. Box 849  
Fayetteville, AR 72702

Re: \$1,140,000 Fayetteville School District No. 1 of Washington County, Arkansas  
Construction Bonds, Series 2011 (Qualified School Construction Bonds)

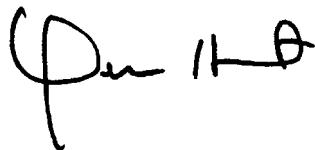
Dear Ms. Thomas:

At 1:00 PM on August 31, 2011, the District received qualified bids from four investment firms in connection with the above referenced bond issue. The best bid was received from the firm of Ross, Sinclaire & Associates, Inc. with a TIC of 4.463284% and an interest rate of 4.30%. The Federal Tax Credit Rate on August 30<sup>th</sup> was 4.55%. As a result the District will receive a 100% interest expense reimbursement from the U.S. Treasury. A detailed Bid Summary, a chart depicting the recent history of the tax-exempt market, and a Proceeds Sheet are attached for your review in connection with this financing.

Based upon the competitive interest rate received and our assessment of the current interest rate market, we would recommend the Board accept Ross, Sinclaire & Associates, Inc.'s bid and authorize this financing.

We appreciate the opportunity to work on this transaction and I look forward to reviewing this information with you and your Board.

Sincerely,



Dennis Hunt

Cc: Dr. Lisa Morstad

**\$1,140,000 FAYETTEVILLE SCHOOL DISTRICT NO. 1  
OF WASHINGTON COUNTY, ARKANSAS  
CONSTRUCTION BONDS**

**(Qualified School Construction Bonds – Direct Payment)**

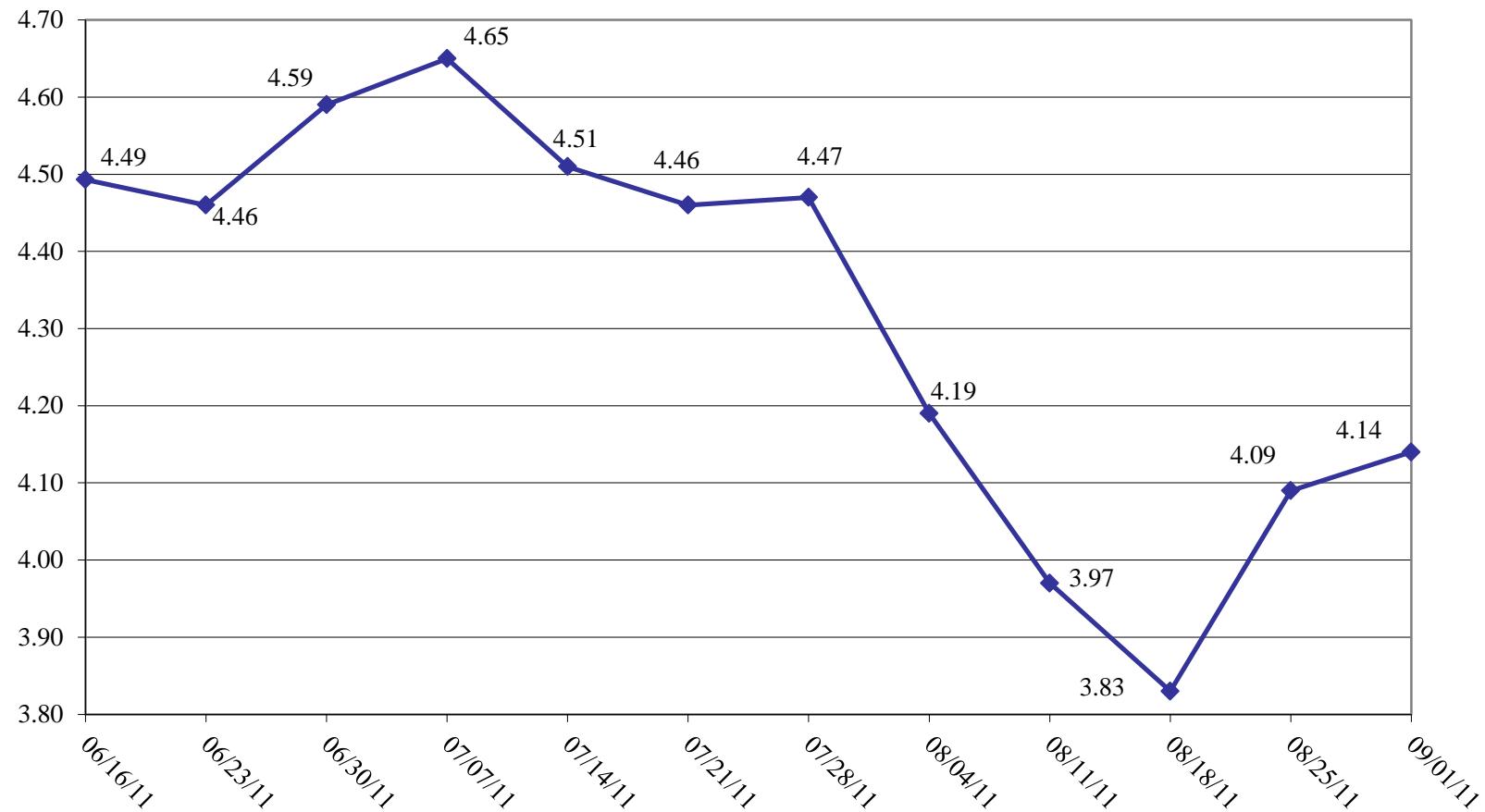
**MATURITY: 09/01/2028**

**DATED: 09/29/2011**

**SALE: August 31, 2011 @ 1:00 P.M. CST**

<u>BIDDER</u>	<u>TIC</u>
ROSS, SINCLAIRE & ASSOCIATES, INC.	4.463284
MORGAN KEEGAN & CO., INC.	4.634309
CREWS & ASSOCIATES, INC.	4.645600
FTN FINANCIAL CAPITAL MARKETS	4.925909

**Bond Buyer 20-Bond General Obligation Index**  
**Most Recent 12 Weeks**



**\$1,140,000**  
**FAYETTEVILLE SCHOOL DISTRICT**  
**Construction Bonds, Series 2011**  
**(Qualified School Construction Bonds)**

**Proceeds Sheet**

Dated: September 29, 2011

Closing: September 29, 2011

\$1,140,000.00	Par amount of the bonds
<u>25,330.80</u>	Equity contribution
\$1,165,330.80	Subtotal
\$ 21,910.80	Underwriter's discount
<u>26,220.00</u>	Financial advisor's fee
\$1,117,200.00	Net Remaining Funds

The net remaining funds will be wired to a financial institution selected by the District on the date of closing.

The remaining funds, including the good faith deposit, should be invested in Authorized Investments (which consist of U.S. Government Obligations or obligations which are fully guaranteed by the United States of America) or in bank certificates of deposit the principal of and interest on which are either fully insured by the FDIC or collateralized by U.S. Government Obligations.



September 22, 2011

*Key Work of School Boards Study*

TO: Board of Education

FROM: Tim Hudson

I will present the sixth of eight presentations by Board members on the *Key Work of School Boards*. The subject is climate.



September 22, 2011

## Fayetteville High School Status Report

TO: Board of Education

FROM: Vicki Thomas

Information regarding the renovation and construction at Fayetteville High School will be presented. Jared Brown, project manager from Nabholz Construction, will present the information.



# FHS SE SW Quads



FAYETTEVILLE HIGH SCHOOL

Activity ID	Activity Name	Original Duration	Start	Finish	2011		
					Sep	Oct	Nov
	<b>FHS SE &amp; SW Quads</b>	165	22-Feb-11 A	12-Dec-11			
	<b>Southeast Quadrant</b>	98	17-Jun-11 A	29-Nov-11			
	<b>SE Quad Building Structure</b>	57	17-Jun-11 A	04-Oct-11	Area C - Steel		
A3000	Area C - Steel	15	17-Jun-11 A	12-Sep-11	Area A Lower Level - CMU Walls		
A2700	Area A Lower Level - CMU Walls	35	15-Jul-11 A	12-Sep-11	Area A Lower Level - Steel		
A2980	Area A Lower Level - Steel	20	03-Aug-11 A	19-Sep-11	Area A Upper Level - Steel		
A3010	Area A Upper Level - Steel	20	07-Sep-11	04-Oct-11	Area A - Upper Level CMU		
A3030	Area A - Upper Level CMU	20	07-Sep-11	04-Oct-11	SE Quad - Canopy Footings		
A3040	SE Quad - Canopy Footings	5	07-Sep-11	13-Sep-11	SE East Elevation - Exterior Framing		
SE1000	SE East Elevation - Exterior Framing	10	03-Aug-11 A	09-Sep-11	SE- East Elevation - Glass		
SE1020	SE- East Elevation - Glass	10	09-Sep-11	23-Sep-11	SE - South Elevation - Exterior Framing		
SE1010	SE - South Elevation - Exterior Framing	15	12-Sep-11	03-Oct-11	Canopy Steel		
SE1170	Canopy Steel	15	14-Sep-11	04-Oct-11	SE - South Elevation - Glass		
SE1030	SE- South Elevation - Glass	25	23-Sep-11	28-Oct-11	SE - West Elevation - Exterior Framing		
SE1040	SE - West Elevation - Exterior Framing	15	03-Oct-11	24-Oct-11	SE - East Elevation - Stone Veneer		
SE1050	SE - East Elevation - Stone Veneer	8	03-Oct-11	13-Oct-11	Canopy Roof		
SE1180	Canopy Roof	10	05-Oct-11	18-Oct-11	SE - East Elevation - Metal Siding		
SE1060	SE - East Elevation - Metal Siding	10	13-Oct-11	27-Oct-11	SE - South Elevation - Stone Veneer		
SE1070	SE - South Elevation - Stone Veneer	10	13-Oct-11	27-Oct-11	Overhead MEP-FP Rough-in		
<b>SE Quad - Interior Finishes</b>	68	15-Aug-11 A	29-Nov-11				
<b>SE Quad Auditorium</b>	66	15-Aug-11 A	29-Nov-11				
A4360	Overhead MEP-FP Rough-in	25	15-Aug-11 A	17-Oct-11			
A3970	Interior Wall Framing	30	17-Oct-11	29-Nov-11			
<b>Lower Level SE Quad</b>	30	22-Aug-11 A	18-Oct-11				
A4180	Overhead MEP-FP Rough-in	30	22-Aug-11 A	18-Oct-11			
<b>Southwest Quadrant</b>	90	27-May-11, A	12-Dec-11				
<b>Procurement</b>	67	27-May-11, A	08-Nov-11				
A1650	SW Bar Joist & Deck Fabrication	35	27-May-11, A	13-Sep-11	SW Bar Joist & Deck Fabrication		
A1640	SW Structural Steel Fabrication	35	25-Jul-11 A	27-Sep-11	SW Structural Steel Fabrication		
A3940	Precast Concrete Riser Delivery	15	29-Aug-11 A	16-Sep-11	Precast Concrete Riser Delivery		
A1670	SW Bar Joist & Deck Delivery	30	14-Sep-11 A	04-Oct-11	SW Bar Joist & Deck Delivery		
A1660	SW Structural Steel Delivery	30	28-Sep-11	08-Nov-11	SW Structural Steel Delivery		
<b>SW Quad Building Structure</b>	90	05-Aug-11 A	12-Dec-11				
A1200	Area E - Load Bearing CMU	18	05-Aug-11 A	16-Sep-11	Area E - Load Bearing CMU		
A1210	Pre-Cast Bleachers	15	29-Aug-11 A	16-Sep-11	Pre-Cast Bleachers		
A1220	Erect Steel	60	19-Sep-11	12-Dec-11			
A1230	Non-Load Bearing CMU	10	19-Sep-11	30-Sep-11	Non-Load Bearing CMU		
A1260	Area E - Slab on Grade	15	19-Sep-11	07-Oct-11	Area E - Slab on Grade		
A1250	Area D - Slab on Grade	15	10-Oct-11	28-Oct-11	Area D - Slab on Grade		
<b>SW Quad Exterior Finishes</b>	30	19-Sep-11	28-Oct-11				
SW1000	SW East Elevation - Exterior Framing	15	19-Sep-11	07-Oct-11	SW East Elevation - Exterior Framing		
SW1010	SW - South Elevation - Exterior Framing	15	10-Oct-11	28-Oct-11	SW - South Elevation - Exterior Framing		
SW1020	SW- East Elevation - Glass	10	10-Oct-11	21-Oct-11	SW- East Elevation - Glass		
<b>Site Work</b>	157	22-Feb-11 A	30-Nov-11				